

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [REDACTED] 1966

No. [REDACTED] 19

**HARRIETT LOUISE ADDERLEY, ET AL.,
PETITIONERS,**

vs.

FLORIDA.

**ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF
FLORIDA, FIRST DISTRICT**

**PETITION FOR CERTIORARI FILED AUGUST 20, 1965
CERTIORARI GRANTED JANUARY 21, 1966**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 506

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[fol. 2]

**IN THE COUNTY JUDGE'S COURT
LEON COUNTY, FLORIDA**

STATE OF FLORIDA,

VS.

HARRIETT LOUISE ADDERLEY.

AFFIDAVIT OF CHARGE

Before me, James C. Gwynn, County Judge in and for Leon County, Florida, personally came W. P. Joyce, Sheriff, who, being first duly sworn, says that on the 16th day of September, A.D. 1963, in the County aforesaid, one

Harriett Louise Adderley did trespass, with a malicious and mischievous intent upon certain property owned by Leon County, a political subdivision of the State of Florida, said property being located at the Leon County jail; contrary to Section 821.18, Florida Statutes.

Contrary to the statute in such case made and provided, and against the peace and dignity of the State of Florida.

W. P. Joyce.

Sworn and subscribed before me this 17th day of September, 1963.

James C. Gwynn, County Judge, Leon County.

(Seal)

[fol. 3] We, the Jury, Find the Defendant Guilty as Charged, So Say We All.

F. J. Worth, Foreman.

CLERK'S NOTE

The Affidavits of Charge and "Guilty" findings of the other petitioners are identical to that of Harriett Louise Adderley and are not reprinted here.

[fol. 4]

IN THE COUNTY JUDGE'S COURT
IN AND FOR LEON COUNTY, FLORIDA

[Title omitted]

MOTION TO QUASH AND DENIAL THEREOF—
Served October 24, 1963

The Defendants herein, by their undersigned attorneys, move under F.S. § 909.03 to quash the information against them on the following grounds:

1.) The Florida Statute involved and under which the instant action is brought, F.S. § 821.18, is unconstitutional in that said statute violates Defendants' rights to freedom of speech, freedom of assembly, and freedom to petition for redress of grievances guaranteed by the First and Fourteenth Amendments to the Constitution of the United States and by Section 5 and Section 13 of the Declaration of Human Rights of the Constitution of the State of Florida, and more specifically, Defendants' rights to peacefully protest to the Tallahassee and Florida general public and government officials existing discriminatory actions against Negroes.

2.) The Florida Statute described in ground one of this Motion is unconstitutional in that said statute violates Defendants' rights to freedom from penal servitude or slavery under the Thirteenth Amendment to the Constitution of the United States as well as Defendants' rights to due process and equal protection of the laws under the Fourteenth Amendment to the Federal Constitution, and more

specifically, Defendants' rights to nondiscriminatory justice under law.

[fol. 5] 3.) The Florida Statute set forth hereinabove does not and cannot constitutionally, under the First and Fourteenth Amendments to the Federal Constitution, encompass Negro citizens' use of county property on which the jail is located for the purpose of peacefully expressing their dissatisfaction with state, county, municipal, etc., racially discriminatory practices and laws, including state laws which render segregated county jails mandatory, i.e., F.S. §§ 950.05-950.08.

4.) The Florida Statute hereinabove described is void for vagueness and unconstitutional under the due process clauses of the Fourteenth Amendment to the Federal Constitution and Section I of the Declaration of Rights of The Florida Constitution in that it fails to prescribe the elements of the offense (i.e., of "other trespasses . . . committed with a malicious and mischievous intent,") with reasonable certainty and to fix an ascertainable standard of guilt and/or in that it includes defendants' rights to freedom of expression, etc., which are constitutionally protected from any state interference or infringement, as set forth hereinabove in grounds 1, 2, and 3 of this motion.

5.) The information is void and is legally insufficient to inform or apprise defendants of the nature and cause of the accusations and charges filed against them as required by Section 11 of the Declaration of Rights of the Florida Constitution and the Sixth and Fourteenth Amendments of the Federal Constitution in that "a malicious and mischievous intent" is highly ambiguous.

6.) The Florida Statute hereinabove described proscribes "other trespasses" upon the property of "another", thereby referring to a *person* in view of prior sections referring to [fol. 6] private property as well as a separate later section (F.S. 821.19) referring to trespass upon *state-owned*

land whereby the information is void on its face as it specifies a trespass not prohibited by Sec. 821.18.

7.) No prosecution under the information may be constitutionally undertaken because the segregated courtrooms existing in the Court in which the information was filed deprive defendants of their rights to a fair trial, equal justice under law, due process, and freedom from state imposed or permitted racially discriminatory policies or practices under the Fourteenth Amendment to the Federal Constitution.

Tobias Simon, Herbert Heiken, and Joseph Segor,
Esqs., c/o Florida Civil Liberties Union, Legal
Panel, 223 S. E. First Street, Miami 32, Florida,
By: Tobias Simon, Of Counsel.

Motion Denied.

Certificate of Service (omitted in printing).

[fol. 7]

**IN THE COUNTY JUDGE'S COURT IN AND FOR
LEON COUNTY, FLORIDA**

No. 110-445B

TRESPASS

STATE OF FLORIDA, Plaintiff,

vs.

JESSE EVANS BLUE, et al., Defendants.

**Trial held before Honorable James Gwynn, Judge of said
Court in the Leon County Courthouse, Courtroom No. 3,
Tallahassee, Florida, October 24, 1963.**

APPEARANCES:

For the State:

Sylvan W. Strickland, Prosecuting Attorney, Tallahassee, Florida.

For the Defendants:

Tobias Simon, 223 S. E. First Street, Miami, Florida.

**Herbert Heiken, c/o Florida Civil Liberties Union,
Legal Panel, 223 S. E. First Street, Miami, Florida.**

**Joseph C. Segor, 407 Lincoln Road, Miami Beach,
Florida.**

[fol. 8] **The Court: Let the reporter show that on 9/17/63 all defendants entered pleas of not guilty when they were arraigned and were represented at that time by attorney Charles Wilson, Pensacola, Florida, and are now at the present time represented by Tobias Simon, Herbert Heiken and Joseph Segor. Show also that Mr. Wilson at that time requested a non-jury trial but with the right to change that request in the event that any of the defendants wanted a jury trial.**

DENIAL OF MOTION TO QUASH

I wish to at this time deny the motion to quash and specifically read into the record that this is not a segregated courtroom. It has never been segregated to my knowledge [fol. 9] since I have been County Judge. The people in this courtroom have a right to sit where they please and No. 7 is entirely out of order as far as I can see.

Mr. Simon: May it please the Court, I'd like to withdraw Paragraph 7. That's included in error. Your Honor is entirely correct and I apologize for the inclusion.

The Court: You may show paragraph 7 is stricken.

(Addressing Jury Panel)

This is not a segregation case but the charges are merely a trespass charge upon property owned by the county and so in answering whether or not you're prejudiced in this type case, I'd like for you to bear in mind that there's no attempt, as far as I know in this case, to integrate anything.

(Jury is selected and sworn and witnesses are sworn.)

The Court: Do you wish to apply the rule?

Mr. Simon: Yes, sir, Your Honor.

(Rule of sequestration is invoked.)

CHARLES DEKLE was called as a witness in behalf of the State and after being duly sworn was examined and testified as follows:

[fol. 10] **Direct examination.**

By Mr. Strickland:

Q. State your name.

A. Charles Dekle.

Q. And your occupation?

A. Deputy Sheriff and Chief Jailer of Leon County.

Q. Did you say deputy sheriff and chief jailer?

A. That's correct.

Q. Where is the Leon County Jail located?

A. It's located on the corner of Gadsden and Gaines Street.

Q. Is that in the City of Tallahassee, County of Leon, State of Florida?

A. Yes, it is.

Q. Were you such deputy sheriff and chief jailer of Leon County on September 16, 1963?

A. Yes, I was.

[fol. 11] Q. State whether or not you saw these defendants in Leon County on September 16, 1963.

A. Yes, sir, I did.

Q. At what location?

A. At the Leon County Jail.

Q. Was this in the daytime or nighttime?

A. It was 9:30 A.M. in the morning.

Q. And where were you in the jail when you first saw the defendants?

A. I was sitting at the desk in the front office which is [fol. 12] facing Gadsden Street and also with Gaines Street on the right of the front of the jail.

Q. Tell us what you saw and heard at that time.

A. Well, at that time I heard a lot of singing and hand clapping and I looked up from my desk and I saw this group marching down Gaines Street and they marched across Gadsden Street, came onto the driveway, the entrance to the jail. At that point they turned and came marching down the driveway of the jail.

Q. What did you do when you saw the group coming down the driveway to the jail?

A. When I saw the group coming down the driveway to the jail, I went outside of the office, outside the door to the stoop which is just outside to the steps that leads down to the driveway.

Q. Now, tell us what you did and what the group of people did at that time.

A. Well, at that time the group was coming, they were already down in front of the entrance to the jail. They were coming closer to the entrance. It appeared to me that they were attempting to come into the jail.

Mr. Simon: I object, if Your Honor please, to his conclusion. I move that portion of the answer be stricken and the jury be instructed to disregard it.

[fol. 13] Mr. Strickland: Your Honor, I think the objection is well taken.

The Court: Objection sustained.

By Mr. Strickland:

Q. Approximately how many steps are there leading from the driveway level up to the jail floor level at the front door?

A. Approximately four.

Q. And when you walked out of the front door of the jail, which of the steps did you stand on?

A. I stood at the bottom step.

[fol. 14] Q. Approximately how close to the bottom step [fol. 15] at the front door of the jail did the people who got the closest to it at that time come to the bottom step?

A. They were right abreast of me. I would say not more than a foot and a half or two feet at the most.

Q. State how closely together this group of people were in relation to each other.

A. Well, at that point there was more of the group had centered in front of the jail. They were just,— At that point I'd say you would consider them, as far as close together, shoulder to shoulder.

[fol. 16] Q. What is the name of the street closest to the jail building on the north side of the jail?

A. Gaines Street.

Q. What is the building closest to the jail building on the [fol. 17] south side?

A. It is the Welfare Department and Juvenile Detention.

Q. Now, what area did this group of people cover at that time in relation to Gaines Street and the Welfare Building where the Juvenile Court is?

A. At that time they covered the distance between the south side of the jail and Gaines Street.

Q. Did I understand you to say a while ago that the group of people coming down Gaines Street toward the jail were singing?

A. Yes, sir, they were singing and clapping their hands.

Q. Now, state how long they kept singing.

A. Well, they continued singing. I don't know exactly how long it was. I couldn't say no definite time but they kept singing from the time that they were in observation until such time as the Sheriff and other officials arrived.

Q. State whether or not at that time there were any prisoners in the jail at the south front side of the jail building?

A. Yes, there were.

Q. Let me add to that question. State whether or not there were any prisoners in the jail at the front of the jail, that is, the portion of the jail nearest to the group [fol. 18] of people who were standing near the Juvenile Court Building.

A. Would you repeat that? I didn't get it straight.

Q. Were there any prisoners in the cells at the southwest corner of the jail building?

A. Yes, there was.

Q. State what, if anything, happened that you heard concerning the prisoners in those cells and the group of people on the outside of the building.

A. They were hollering back and forth from the inside of the jail from the cells to the group outside and vice-versa.

[fol. 19] Q. Was the Leon County Sheriff at the jail at that time?

A. Not at that time. He arrived a few minutes after them.

Q. Did he just happen to arrive at that time?

A. No, sir. He was called.

Mr. Strickland: You may cross examine.

Cross examination.

By Mr. Simon:

Q. Officer, you say there was a lot of singing and hand-clapping?

A. Yes, sir, there was.

Q. Was there any other noise?

A. Well, that was about the extent of what you could hear.

Q. I heard you say, I think, that you came down to the bottom step and they were about two feet from you or two feet from the bottom step.

A. Approximately a foot and a half or two feet.

Q. Now, did they ever get any closer to the building than that?

A. No, sir. I advised them they could not block the entrance to the jail and I worked them back about middle-ways the driveway.

Q. You asked them to go back?

[fol. 20] A. Yes, I did.

Q. Did they obey you?

A. In a manner, yes, sir.

Q. Well, did they go back to where you were satisfied to have them?

A. Yes, sir.

Q. And did they come close to the jail after that time?

A. Not after that time, no, sir.

Q. Would you say, then, that they did obey the request that you, as an officer of this county, made of them?

A. Yes, sir.

Q. Did anybody get hurt on that day?

A. Not to my knowledge, no, sir.

Q. Anybody get pushed or shoved?

A. No, sir.

Q. Anybody carrying any sticks or stones or bricks or bats or anything like that?

A. I observed none.

Q. Other than the singing and hand-clapping, were they doing anything other than just standing around?

A. Well, they had their own little dance, I guess. They were jumping up and down and singing and clapping their hands.

(At the request of Mr. Simon a blackboard was placed before the jury.)

[fol. 21] Q. Now, Officer, I wonder if you would go up to the blackboard and take a piece of chalk. This is probably to help me more than the jury but if you could draw the jail and draw the streets surrounding the jail so we could have some idea of what you were talking about as far as where these people were.

A. (Drawing sketch.) I'm not much of an artist.

Q. Well, I want to commend you, frankly. I think you're doing a very fine job. It's very hard to draw these things. Now, would you mark out the jail, just mark "jail" over where the jail building is?

A. (So marking.)

Q. All right, and what's that little building right under it?

A. This is a canopy right here. It's still part of the jail. It's the jail but it's a canopy over the driveway.

Q. Would you indicate which direction is north by an arrow?

A. (So marking.)

Q. What's the name of that street you said was on the north side?

A. Gaines Street.

Q. Would you write that down there?

[fol. 22] A. (So marking.)

Q. Now, would you draw a heavy line where the south boundary of Gaines Street is?

A. You mean the jail boundary or just the boundary of Gaines Street?

Q. Well, do I understand from you that in your opinion Gaines Street and the jail property touch each other?

A. With the exception of the sidewalk.

Q. Well, fine. Then draw in the sidewalk.

A. (Making diagram.) This would be the sidewalk and we have a heavy fence right along the sidewalk.

Q. Is this part here the sidewalk?

A. No, the sidewalk would be in between.

Q. In between?

A. This would be the street here.

Q. That's the street over here where I've marked "street"?

A. Yes, sir.

Q. And this is the sidewalk?

A. Yes, sir.

Q. Now, what is on the west of the jail?

A. The west side of the jail would be what we'd call the front of the jail.

Q. Yes, sir.

A. Out right through here, right down through this area [fol. 23] here, we have a little alley. This portion in here is our driveway or entrance into the jail under the canopy there. Immediately in front of it is a parking area we have out here which goes up to this street here. This area in here is parking area.

Q. Would you put "parking" where you indicated parking?

A. (So marking.)

Q. And then right above there is where you indicated the driveway was?

A. The entrance.

Q. Or entrance? And just west of the parking area is another sidewalk, isn't it, and a street?

A. Yes, sir, there is just west of it.

Q. What is that street called?

A. That is Gadsden Street.

Q. Now, if you get tired, sit down. I'm going to ask you some questions and I'm going to refer to this drawing again. You were in attendance upon your duties when you heard the singing?

A. That is correct.

Q. And then you went outside?

A. Yes, I went outside as the group turned in the driveway to the jail.

Q. All right, now, could you show us by a big arrow [fol. 24] which direction the group was coming from and how close they got to you and where the step was that you were standing on?

A. You mean after they turned into the entrance or where I first observed them at?

Q. Well, you'll have to show us where you first observed them and from your own knowledge show the direction they were coming from, if you can.

A. I observed them first right here on this corner at Gadsden and Gaines.

Q. Would you put a big arrow there?

A. And they continued down to the entrance of the jail in which they turned in this direction and came up Gaines.

Q. And how close did they get to you? Where were you standing when you came outside? Put a "Y" there.

A. This will represent the steps.

Q. All right, sir.

A. And I was standing approximately, about as close as I can get it, I was standing on the bottom of those steps when the group approached me.

Q. And were they all in that entrance-way at that time?

A. Yes, sir. They were lined up. Now, I wouldn't say that when they first approached me at that particular point, [fol. 25] that they were all in the entrance here. They were still coming in.

Q. But they eventually all came in the entrance-way?

A. Yes, sir.

Q. You say they were lined up, Officer?

A. Well, no, sir. You know when you get a group of people together how they walk. They're not going to walk in any straight line or march in any straight line.

Q. But they were just walking along. They weren't running or anything like that?

A. Well, as I said previously, they were clapping and jumping and hollering and singing.

Q. All right, and then they came up to within a foot of you and then you asked them to go back?

A. Yes, sir, approximately a foot and a half or two feet. They were right abreast of me.

Q. And where did you ask them to go to and then I understand they went to where you asked them to go? Show me where they went.

A. I did not direct any specific point for them to go to. I just advised them they could not block the entrance to the jail and we kept working them back until we got them back to where I felt that there was sufficient room for them not to obstruct the entrance to the jail.

[fol. 26] Q. Where were they standing when you felt they were no longer obstructing the entrance to the jail?

A. They were standing, I'd say approximately the bulk of the group at that time was standing,— The bulk of the group, I'd say they were standing between half and two-thirds of the way out from under the canopy.

Q. All right, Officer. In other words, at your request these people moved back from the entrance-way, moved west of the entrance-way?

A. To the jail, yes, sir.

Q. And the entrance to the jail was not obstructed?

A. At that point, no, sir.

Q. People could go in and out?

A. Yes, sir, they could move in and out of the jail at that time.

Q. Was any business of the jail to your knowledge interfered with at that point?

A. No, sir.

Q. How many people would you estimate were there?

A. That is Gadsden Street.

A. At that point I would have said there were around approximately 175 or 200.

Q. Two hundred? A hundred seventy-five or two hundred?

A. Approximately.

Q. Were any of them in the parking lot?

[fol. 27] A. Not at that time, no, sir.

Q. Were any of them on Gadsden Street?

A. I observed none there. I did not look at Gadsden at that point. I was trying to take care of the security of the jail.

Q. There's a grassy strip along here, isn't there?

A. Yes, sir, very graded.

Q. Was anybody sitting on the grassy strip?

A. I did not observe that.

Q. How long did you sit there and observe these 175 or 200 people?

A. "Sit", now, just what do you mean by "sit and observe"?

Q. Well, I'll withdraw the question. After you came out and you got them to stop obstructing the entrance to the jail,— Oh, I might ask you first, how long did it take them to march up and then obey your command and back off?

A. Well, I would say,— Now, you mean from the time they came in to the entrance of the jail until the time I gave the command or order for them to move back, until they moved back?

Q. Right.

A. Well, just a matter of a minute or two. We got it worked back. They didn't just immediately fall back but [fol. 28] we got them back.

Q. Was it just about as fast as 200 people could move back?

A. I would say that, yes, sir.

Q. Assuming that 200 people were willing to obey your command, that was about as fast as 200 people could move under these circumstances?

A. That's right.

Q. Then apparently they were willing to listen to you?

A. I'd say yes.

Q. Now, after they moved back, did you continue to observe them?

A. I was out with them until the point that the sheriff arrived which was just minutes later.

Q. And then what did you do?

A. When the sheriff came, I went back inside the jail and resumed my duties as chief jailer.

Q. You did not observe them any further?

A. No, sir, I did not. I did not observe them any further.

Q. You remained in the jail performing your duties for the next two or three hours?

A. Well, until 2:00 o'clock that afternoon. I was on duty until two that afternoon.

Q. And you left at 2:00 o'clock that day?

A. Yes, sir, I did.

[fol. 29] Q. During the period from the time you went back into the jail until the time you left at 2:00 o'clock, was the business of the jail interfered with in any way by these people?

A. Well, I will say this. The ones that were arrested, we processed those but as far as duties are concerned, as far as any interference with the duties of the jail within, it was not interfered with. Nothing inside of the jail, as far as performance of duties, was interfered with.

Q. Did it break up the routine of helping the prisoners or feeding the prisoners or guarding the prisoners in any way?

A. It didn't break up the routine. It just made a little extra work.

Q. Now, were you in a position, when you were performing your duties, to hear what was going on outside?

A. Outside, no, sir, I was not. I did not try to because, as I say, I had duties I was obligated to inside of the jail and when the sheriff came, at that point I went back inside of the jail and I took up my duties which is required of me.

Q. The noise outside wasn't so loud that it interfered with your duties. Is that correct?

[fol. 30] A. Well, I wouldn't say that it was so loud that it interfered. Of course, we've got to perform those duties regardless of the noise. That wouldn't have made any difference how much noise was going on. We got a certain amount of duties that we got to do and regardless of whether there's noise or whether it's perfectly quiet, we've got to perform those duties. We got to maintain the jail.

Q. Well, I realize, Officer, that you are the State's witness but I'll take a chance and ask you this question anyway. Did you personally find the noise real loud and harmful to you?

A. Yes, sir. It was "blusterous" and I would say it was excessive noise.

Q. Was it excessive for 200 people?

A. Well, I would say it was plenty of noise. Let's put it that way.

Q. Did you hear what was being said or done?

A. Well, about the only thing that I can actually say is I could determine,— That was said, as far as they were singing this Freedom, I believe, is the name of the song they sang, Freedom and—

Q. How does that song go?

A. I don't know.

[fol. 31] Q. How many times was it sung?

A. I cannot tell you that. I do not know.

Q. And they were singing a Freedom song?

A. Yes, sir. That is the song that I remember them singing. I've heard it numerous times but, as I say, I don't know it.

Q. Well, that's all right. Did you hear them singing anything else?

A. Well, they sang a lot of different songs but I don't know them. They was hollering and jumping up and down and clapping their hands, as I stated before, but they sang different songs but I do not know what the names of them are.

Q. Now, you said there was some talk between the 200 who were down on the ground and the other people who were in the jail. Is that right?

A. Yes, sir.

Q. Now, could you tell me who were these other prisoners in the jail? I don't mean their names. Tell me what they were charged with and how many you had.

Mr. Strickland: Objection, Your Honor, on the ground that it's immaterial.

Mr. Simon: Counsel opened the door, Your Honor. I might have agreed, I think I made proper objection that it [fol. 32] wasn't material and Your Honor overruled my objection; and I feel either all that has to be stricken or we should now be allowed to inquire as to what relationship, if any, existed down there between these people.

The Court: What was the door opening that was made?

Mr. Simon: He asked, I wrote it down, he asked were there any prisoners in jail on the south side or any prisoners in jail towards the Juvenile Court Building and then he asked what was going on back and forth between them and I objected to it. Counsel for the State said, well, there may have been something going on between them. Your Honor looked at a law book and overruled my objection. I'd like to find out who the people were that they were talking to. I think it's very material.

The Court: I think that why they were in jail would be immaterial, whether they were in the jail for being drunk or in jail for murder or in jail for—

Mr. Simon: Well, I'll submit, Your Honor, if they were in jail for demonstrating and if they were students at A. & M. it might be material and I would proffer that as the officer's answer.

[fol. 33] The Court: I'm afraid we're going to get into collateral issues and I don't want to try the demonstration here at all.

Mr. Simon: I agree with Your Honor but my hands are tied now because of what counsel did.

Mr. Strickland: Your Honor, I'll withdraw the objection.

The Court: The objection is withdrawn. You may proceed.

A. There were four white females that were incarcerated for contempt of court. There were two white females that were in for being drunk. There were four or five colored females in one of my juvenile cells which were being held in contempt of court.

By Mr. Simon:

Q. Was that contempt, if you know, in connection with the demonstration that had taken place in front of the Florida State Theatre a few nights before?

A. That is correct.

Q. You have separate cells for men and women, do you not, Officer?

A. That is correct, yes, sir.

Q. Is it not a fact that you also keep prisoners separate on the basis of color?

[fol. 34] A. That is true.

Mr. Simon: You may inquire.

Redirect examination.

By Mr. Strickland:

Q. Mr. Dekle, I believe you testified that after you moved the group of people back from the front door of the jail, that the front entrance of the jail was no longer obstructed. Obstructed for what purpose when you say it was no longer obstructed?

A. Well, it was not obstructed to the point that you could get in and out of the jail.

Q. Excuse me, now, but what kind of vehicles of persons could get in and out of the jail?

A. Well, that would pertain to persons only. No vehicles could have possibly, it would not have been clear to that point.

Q. An area on this sketch which you have marked "entrance", what is that?

A. You mean what is it made out of?

Q. No. What is the use of it?

A. It is used for transporting prisoners in to jail.

Q. Is it used for people to walk or something else?

A. It's used for transportation purposes.

[fol. 35] Q. You mean that vehicles come in and out this way?

A. Yes, sir. That is our emergency, well, we could say emergency; that is when our cars or the police cars come in. As you know, we handle the city prisoners but that is an entrance for vehicles primarily when they are bringing anyone to the jail and also for jail supplies.

Q. Is this entrance used for any other purpose besides vehicles, the road that you have just stated? I'm not asking what those purposes are, just whether or not this entrance is used by other vehicles for other purposes. Just "yes" or "no".

A. No. That entrance is strictly for the use, as I stated previously, of the sheriff's department, highway patrol, police department, official cars and supplies and equipment to the jail. It is not a thoroughfare if that's what you mean.

Q. Is this entrance one-way or two-way?

A. It is one-way.

Q. Now, on this sketch where is the exit for motor vehicles which come in this entrance?

A. Well, it comes right on around and comes right back up by the side of this building. This entrance comes right on around, comes right back out, comes right around in [fol. 36] this manner here and comes right back out on Gadsden Street at this point.

Q. After you had moved the people back away from the entrance, meaning the door, the front door and front steps of the jail, state whether or not cars, automobiles would have enough room to come in this entrance and out.

A. They would not as far as vehicles are concerned.

Q. State whether or not at that time the exit portion of the driveway between the jail canopy and the Juvenile Court Building was blocked by some of those people.

A. It was. It was blocked,— The bulk of the people were here but they were scattered all over, all the way over this driveway to the south side of the jail.

Q. From the standpoint of the width of this driveway approximately what percentage of the width was blocked by the people after you had moved them back away from the jail door?

A. I would say approximately half.

Mr. Strickland: No further questions.

Recross examination:

By Mr. Simon:

Q. Officer Dekle, did I understand that you told them to [fol. 37] go back?

A. I asked them to, yes.

Q. And they obeyed you?

A. With some help.

Q. And they went back and you were satisfied to have them at that point?

A. I was satisfied from the standpoint that I had them where they could not enter the jail. That was my primary concern was keeping them out of the jail.

Q. You never asked them to go back any further?

A. No, sir, I did not.

Mr. Simon: Thank you.

Mr. Strickland: No further questions.

SHERIFF W. P. JOYCE was called as a witness in behalf of the State and after being duly sworn was examined and testified as follows:

Direct examination.

By Mr. Strickland:

Q. State your name.

A. W. P. Joyce.

Q. And what is your occupation?

[fol. 38] A. Sheriff of Leon County.

Q. How long have you been Sheriff of Leon County?

A. January of 1953.

Q. Has that been continuous since that time up until the present date?

A. Yes, sir.

Q. Where is the Leon County Jail located?

A. 402 East Gaines Street.

Q. Where was it located when you took office in January 1953?

A. Same location.

Q. And where has it been located at all times between those two dates?

A. Same location.

Q. During that period of time has anybody other than you, as Sheriff of Leon County, had the possession or the custody of that building?

Mr. Simon: I object on the grounds that there is no evidence before the Court that he has ever had custody or possession of the building. I don't know who has custody or possession of the jail or title, which I think is material in this matter, but I object on the grounds that there is no proper predicate at this point.

[fol. 39] The Court: I think it's a leading question. Would you mind rephrasing your question?

By Mr. Strickland:

Q. State whether or not during the past continuous period of time since the first week in January of 1953 you have

performed any functions or duties in connection with the physical plant and the legal functions within the Leon County Jail.

A. I have been responsible and in authority of the jail during the entire time as sheriff.

Q. Has anybody other than yourself exercised any responsibility or authority over those functions and that physical plant?

Mr. Simon: To which I respectfully object on the ground that it calls for a legal conclusion.

The Court: Objection overruled.

A. I have been responsible for the jail and any operation of the jail has been at my direction through agents or deputies.

By Mr. Strickland:

Q. Has anybody other than yourself, as sheriff, exercised any authority except under your direction and control during that period of time?

Mr. Simon: Same objection.

[fol. 40] The Court: Objection overruled.

A. They have not.

By Mr. Strickland:

Q. State whether or not the Leon County Jail early on Monday morning is a busy place.

Mr. Simon: I object on the grounds that it's immaterial and impertinent, incompetent, irrelevant to the issues in this cause and calls for a conclusion.

Mr. Strickland: If the Court please, one of the elements of the offense charged pertains to mischief and according to the legal definition of "mischief"—

Mr. Simon: I object to counsel reading any legal matters in the presence of the jury at this time.

The Court: Objection sustained on that. I overrule the objection. You may answer the question as to whether or not Monday morning is a busy morning.

A. Every morning is a busy morning. However, Monday morning is the busiest morning that we have at the county jail, consistently the busiest.

Q. What functions do the jailers perform at the Leon County Jail on Monday mornings between the hours of 9:00 and 11:00, say?

A. Besides their routine and regular duties of looking out [fol. 41] for the inmates, feeding them, etc., we have all of our tradesmen call on Monday morning. We also,— Those persons arrested from Friday night on, it's necessary to be brought to the different courts on Monday.

Q. Excuse me. There was a noise in the courtroom. You said it was necessary to bring them where?

A. To the respective courts; those that have been incarcerated, unable to make bond from Friday night forward; therefore, we have a large group that has to be brought up to the courts on Monday mornings for setting bonds and pleas, etc., and we have all our tradesmen come in.

Q. Excuse me. Let me interrupt right there. Is the Leon County Jail a part of the Leon County Courthouse, that is, the physical structure? Is it all in the same building?

A. It is not.

Q. How many city blocks approximately is the Leon County Jail from the Leon County Courthouse where you say that these prisoners are brought on Monday mornings?

A. Approximately seven blocks. That is, the prisoners are brought before the county courts. Now, we also have the city prisoners and the police officers also have to bring [fol. 42] their prisoners from the county jail to the police department and return them on Monday mornings.

Q. What is the method that is used in order to bring or see that the prisoners are delivered to the respective courts on Monday mornings? Excuse me. Not in detail, just the type of transport?

A. They are transported by car or van by the deputies or the police officers.

Q. What are the other unusual duties you started to testify to a minute ago pertaining to Monday mornings at the Leon County Jail?

A. Well, most of our tradesmen, grocers, laundrymen, supply houses, etc., on Monday mornings, come in to make necessary deliveries, replenish supplies, etc.

Q. What is the street that is nearest to the Leon County Jail Building on the north side?

A. On the north side would be Gaines Street.

Q. And what is the nearest physical structure to the south side of the Leon County Jail?

A. That would be the building that houses the Juvenile Judge's Court and part of the Welfare Building.

Q. Will you look at this sketch, please—

Mr. Simon: Counsel, you will stipulate, I am sure, that we can take a picture of this or stipulate on a drawing of [fol. 43] this for insertion in the record. It's pretty hard to put the blackboard in evidence. This was not drawn by Mr. Joyce so if you're going to use it with him, I feel it should be made a part of the record.

By Mr. Strickland:

Q. Does this appear to you to be an approximate diagram of the relationship between the jail building and the streets, the entrance driveway, the parking lot and the Juvenile Court Building?

A. I don't see the Juvenile Court Building indicated there.

Q. Assume for the purpose of discussion that this would be the boundary wall, the north wall of the Juvenile Court Building and the Welfare Building.

A. Generally, yes. Of course, it's not in proportion at all.

The Court: Sheriff, the Juvenile Court Building would not go back that far, would it?

A. I beg your pardon?

The Court: The Juvenile Court Building would not go back that far, would it?

A. That would be the boundary or fence line. The fence line goes all the way back; the building does not.

[fol. 44] May I indicate approximately where it,— Shall I?

By Mr. Strickland:

Q. Let me ask you this question first. Would you rather draw another sketch on the other side of the board to testify from?

A. I can.

The Court: If it would be identical to that one, there's no use in doing it but if there would be any changes in it, I think it would be proper for him to draw it.

By Mr. Strickland:

Q. Did I understand you to say, Sheriff, that this sketch is not exactly preportional?

A. It's generally but, of course, it's not drawn to scale or anything like that. It's a good rough drawing of it but, as I say, the building, the Juvenile Court Building and all that I'm speaking of is not indicated, just a line. The building is along there.

Q. For the purpose of testifying as to what you saw and did at the Leon County Jail on September 16, 1963 would this sketch be sufficient to illustrate that?

A. Yes.

Q. State what office is located in this approximate position.

A. The juvenile office.

Q. The Juvenile Court office?

[fol. 45] A. Yes, sir.

Q. Where were you on the early morning of September 16, 1963?

A. You mean at the time I was at the jail? My location at the jail?

Q. Well, let me word this so it won't be a leading question. Were you in the Leon County Courthouse at 9:00 or 9:30 on Monday morning the 16th of September?

A. I was in the courthouse from about 7:30 Monday morning and I left here somewhere, I don't know, 8:30 or 9:00 o'clock or it might have been a little later.

Q. Now, when you decided that you were going to leave and go down to the jail, what were you doing?

A. I was in a conference with one of the Circuit Judges and five or six attorneys in the Circuit Judges' Chambers.

Q. State whether or not that pertained to a hearing or some judicial proceeding that was about to take place.

A. It did.

Q. And at that point had you planned to leave and go back to the jail at that time?

A. No, sir, I had not.

Q. Did you go to the county jail at that time?

A. I did. I received a message—

[fol. 46] Q. Excuse me. I want to make sure we don't get hearsay in the record. You received a message and then you did what? Went where, rather?

A. I went to the county jail.

Q. All right, sir, now, tell us what you saw and did and what happened in your presence when you arrived at the county jail.

A. Prior to going to the jail I gave instructions to my office to call the city police department, Florida highway patrol and all of our men and have them go directly to the jail, that I would meet them there. Some of the officers were there when I arrived. I drove in, parked, and there were a large group of Negro persons on the driveway nearest the jail on the embankment between that driveway and the parking area and on the sidewalk adjacent to the upper level parking area. There were quite a number of both Negro males and females. I immediately went into the jail to make an inquiry to see if anyone had come into the jail or if everything was in order in the jail. No disturbance inside. I gave instructions to my jailers and deputies at that time who were inside, what I wanted them to do. I then came outside and talked with a number of the officers, placing them at different points that I wanted them.

[fol. 47]

This group of persons that were there were singing, chanting at different times, and this went on possibly for, I don't know, five or ten minutes maybe, about that time. I recognized a number of these people, two in particular, that were sitting on the driveway right at the support that holds up the portecochere. I recognized these two persons as being student leaders.

Mr. Simon: I object to that as being a conclusion of the witness.

The Court: He recognized them as student leaders. The objection is overruled. They're people that you knew of your own knowledge?

A. They're people I knew of my own knowledge and what I had seen in the past, they were student leaders. I recognized these two people as student leaders.

By Mr. Strickland:

Q. What were their names?

A. One of them was Alton White and the other boy, his last name is Blue. I don't know his first name. The only thing I ever heard him called is Blue.

Q. State whether or not he is one of the defendants here in court this morning.

A. Blue is, yes.

[fol. 48] Q. You have seen him here this morning and identified him as being the Blue that you referred to?

A. Yes, sir.

Q. State whether or not you had a conversation with those two people at that time.

A. I did. I went up, called Alton by his first name. Alton was sitting on the pavement generally facing west. Blue was sitting on the pavement leaning up against the north support of the portecochere generally facing east.

Q. Let me interrupt you, please, and ask you to point out on the sketch where they were and; while you're there, also point out where the rest of the group of people were at that time.

A. This is the portecochere here for driving under for cars going in letting the prisoners in and out. Generally, and I think there's a little overhang here, there is a round post that supports that building there and another one there. Alton was sitting about in this position here. Blue was up against this post here. Now, the others were generally from this position here, a large group of them. These are steps. This is a parking area. This is a sidewalk here and a step right along here goes down. This is an elevated [fol. 49] area about four or five feet that goes to this parking area. They were all along this bank on the sidewalk and generally in about that area. There's a large tree here. They were on up to this tree. This is the entrance into the jail; a little stoop here and a door that comes into the jail. This is the general area of these people. This was Alton White and Blue sitting here. I walked to this position right between them. They were sitting down on the ground. I leaned over, talked to Alton this way and Blue was right here.

Q. State what the conversation was at that time between yourself and Alton White and the defendant Blue.

Mr. Simon: To which I respectfully object, if Your Honor please, on the grounds that Alton White is not a defendant before this court. The defendant Blue is before this court but any testimony taken or any conversation with the defendant Blue would be hearsay so far as the other 31 defendants would be concerned and I regard that such testimony would be inadmissible as against them and would be prejudicial if the testimony of one person could be heard by the jury insofar as the other 31 should be concerned.

The Court: If I should follow that rule of argument, no conversation with any defendant would be admissible be- [fol. 50] cause there are more than one; but I do not believe that's the law. The witness may testify in regard to any conversation that he had with the defendant Blue and you gentlemen are directed to consider it only as to him unless it was in the presence of some other of these defendants.

Mr. Simon: I appreciate Your Honor's explanation and I'm sure that that satisfies the requirements of the law. I am with you. I would appreciate it if Your Honor would relate to the jury what it means to be binding on one and not on the other under this charge.

The Court: The law requires, as I understand it, that a conversation between the sheriff and a third party would not be admissible into evidence unless it was with the defendant, himself, or in his presence and so his conversation could only be considered by you as to the defendant Blue and any other defendant who was present at that time.

Mr. Simon: Thank you, Your Honor.

By Mr. Strickland:

Q. First let me ask this. This conversation that you had at that particular moment with Alton White and the defendant Blue was not heard by the other group of people, was it?

[fol. 51] A. It could have been heard by a number of them but who they were, I could not say.

Q. But not by all of them?

A. It could not have been heard by all of them, no.

Q. Now, tell us what that conversation was.

A. I asked these boys if they would get with the group that was there with them and ask them to leave the property. I told them that if they did not leave the jail property, that they were subject to be arrested for refusing to obey a lawful order, that they were trespassing and that I was asking them to get with the group to ask the group to leave. The results were that they did not make an effort. Blue did not make an effort to disperse the group.

Q. Do you recall what Alton White said within the hearing of the defendant Blue at that time?

A. Yes.

Mr. Simon: I object, Your Honor. This is taking hearsay one step more than—

The Court: If it was a remark made in the presence of the defendant, it would be admissible. I overrule the objection.

A. Alton said, "Sheriff, we came here to be arrested and we're not going to leave without being arrested". I told him that their arrest would not do anyone any good. I asked [fol. 52] him again to talk to this group and he looked at Blue and Blue shook his head, said, "No, we're not leaving. We're going to stay here". I said, "I'm going to give you boys about ten minutes to discuss it between yourselves and if at that time you have not left, I am going to have to take action". I stepped back from the position that I was in towards the steps and waited eight to ten minutes. I then announced to the entire group loudly and clearly that they were in violation of the law, that they were subject to arrest and if they did not disperse and leave the jail, that it would be necessary for me to place them under arrest. At that time some of them were standing. They then sat down. Some remained standing. Not all sat down. There was some in the parking area that turned around and walked off. There were three adults standing between two cars in the parking area and I asked an officer to walk up to them and ask them if they were in this group or if they were on official business and the officer went to them at my direction.

Mr. Simon: I object to any conversation.

The Court: Objection sustained as to any conversation.

By Mr. Strickland:

[fol. 53] Q. Just state whether or not those three people left.

Mr. Simon: Well, I regard that as immaterial and irrelevant unless these people are before this court.

The Court: Objection overruled.

A. I directed this officer, as I stated, to find out if they were with this group or if they were there on other business and if they were not with this group or on other business,

to please leave until we got the jail under a situation where they could come in. These three people turned around and left. I also told this group that if they offered resistance in any form or manner if I placed them under arrest, that there would be an additional charge of resisting arrest placed against those so resisting. I waited another just a minute or two. They made no effort whatsoever to leave. I then announced to them that each one of them was placed under arrest and I instructed the officer to surround the group that was there and to take them in custody. At this time there was a lot of noise started about "we came here to be arrested. That's what we wanted", and Blue and White both stood up, got up from the ground and stood up and said, White, "No resistance, no violence of any kind. We'll march in". And they hushed immediately. We [fol. 54] marched them into the basement of the jail.

Q. Did I understand you to say a minute ago that there were a number of people other than the particular three that you mentioned who did leave?

A. There were others standing in the parking area on the back of this particular concerted group there. They were standing in the parking area closer back to the street. There were some on the sidewalk, as far as that goes, standing on the sidewalk that apparently were just onlookers. They dispersed and left when I made the announcement I did to the group.

Q. Were any of those people arrested?

A. They were not.

Q. Was anybody who made any effort to turn and leave arrested?

A. There was not.

Q. How many people were arrested at that time?

A. I believe there were 107. I'm not sure. The record would reflect that. They were all booked and timed and charged at the same time. I believe there was 107. I had two counts at the time. One person counted 96 and one counted 106 and later the record reflected, I believe, 107; but I had two people counting them as they were marching [fol. 55] in and I got two different counts.

Q. Would you refer to the sketch again, please, and state—

The Court: There's one thing that's not clear in my mind and I'd like to ask him one question if you don't mind. Were all of those that you arrested on the county jail property?

A. Yes, sir. They were all within the confines of the county jail property.

The Court: You said some of them were on the street out there. Were any of them arrested?

A. They were not. When I made the announcement to the entire group that those not leaving would be guilty of trespassing and asked them to disperse, all of them, there were,— In fact, there were a number of them back in this area, in the parking area. There were some on the sidewalk parallel to Gadsden Street here. There were three adult Negro females standing between some cars that were parked here. They all left but this group stayed and when I told them that they were subject and would be placed under arrest if they didn't disperse, the majority of them that were standing up set down.

By Mr. Strickland:

[fol. 56] Q. When you arrived at the jail that morning, that is, on this particular occasion that morning, what percentage of the width of the entrance driveway, that is, the driveway for motor vehicle purposes, was blocked by these people?

Mr. Simon: I object, if Your Honor please, on the grounds that it's a leading question and calls for a conclusion of the witness.

The Court: Will you repeat your question? What per cent of the—

Mr. Strickland: Of the width of the motor vehicle driveway was blocked by these people.

The Court: You're assuming that part of it was blocked so I'm going to hold that that is a leading question.

Mr. Strickland: Very well.

Q. When you arrived at that time at the jail, what was the circumstance concerning the motor vehicle entrance driveway?

A. When I arrived under the portecochere, the group was in the driveway possibly two to three feet inside of the post that would be taking up maybe a third or a little more of the portion of the driveway. Now, there was some fluctuation of that. They weren't just standing there. There was [fol. 57] some fluctuation moving forward and backward. As a matter of fact, I asked them at one time to move back and they generally went along with that. Now, I was not outside the entire time. I had some business inside and out of the jail. I do know that at one time I looked up as they started back toward the jail and the officers got them back over to where it's indicated there where they finally settled down and inside the portecochere and the fence and Blue and White, I mean Blue and Alton, yeah, were generally the closest ones to the jail. It would have used up at least a third of the driveway.

Q. At the time that you found out what was going on at the jail that morning, state whether or not you had some deputies who were off duty.

A. Oh, yes.

Q. And what did you do concerning those off-duty officers?

A. Well, as I stated originally, as soon as I got the call that I got, I instructed my officers to call all the deputies on duty, also the police and the highway patrol, to send officers to the jail. I had all of my men called out.

Q. How many deputies did you have on the 16th of September approximately?

[fol. 58] A. You mean total deputies?

Q. No, field men; you know, the deputies in the type of work who would go to a scene such as this?

A. Well, I had some of my jailers and some of my office deputies also go down other than the field men that I had. I had about 16 or 17 of my deputies down there. I don't know just how many police officers and highway patrolmen

were sent from each department but I'd say that there were between 30 and 40 officers total.

Q. That included deputy sheriffs, highway patrolmen and city police officers?

A. City police officers.

Q. Now, state whether at this time you had deputies who were on a particular assignment at other places who were re-assigned to the Leon County Jail.

A. As I stated a moment ago, I had to take some of my office deputies from their work there and I don't know just what other assignments these officers had. I just gave an order to my dispatchers to have all of the deputies sent to the jail and I don't know what each officer was assigned to or what he was doing at the time but they were all taken from what they were doing and sent down there.

Mr. Strickland: No further questions.

[fol. 59]

Cross examination.

By Mr. Simon:

Q. Sheriff, you testified that when you received a call from the jail on Monday morning, September 16, you were in session or talking with a circuit judge and a number of attorneys?

A. Correct.

Q. You were discussing the case, were you not?

A. That is correct.

Q. The name of that case was Tallahassee State Theatres, Inc. vs. Due.

A. Along with me and several others that were sued. It was a contempt of court charge.

[fol. 60] Q. Well, that's the case you were discussing?

A. Correct.

Q. And that arose out of a demonstration?

A. That is correct.

Q. And the demonstration at your jail was connected with that matter, was it not?

A. I would assume possibly it was in protest of what had been done.

Q. And you knew it was a protest of what had been done?

A. I assumed that it was, yes.

Q. You have never found any reason to learn to the contrary, have you?

A. No, I have not.

Q. Now, you stated when you came to the jail, you drove in?

A. That's correct.

Q. Where did you park your car?

A. I parked my car in the first parking place on the right turning south off of Gaines Street into the parking area nearest the jail.

Q. Did you drive into that entrance-way?

A. Yes, I did.

Q. Run over anybody?

A. No, I didn't.

Q. Anybody try to block your car?

[fol. 61] A. Not at all.

Q. Do you know of a single tradesman that couldn't get into the jail that morning?

A. He could have got in as far as I did.

Q. Now, here is the sidewalk on Gadsden, is it not?

A. I assume that was Gadsden Street. The sidewalk would run parallel to it.

Q. Up here. Where I have just marked in broad chalk, is that the sidewalk on Gadsden Street?

A. Yes.

Q. When you came there, were there any people standing on that sidewalk?

A. I frankly didn't notice that sidewalk when I first drove up. What I had my attention on was the jail entrance. That's what I was interested in, to see if anyone had gotten into the jail. Gaines Street into this entrance, we have a parking lot, parking spaces that come along here. We have parking spaces in here and when I pulled in, I parked in this first parking area here.

Q. Now, at the time of the arrest were there any persons on the sidewalk?

A. Now, are you speaking about the sidewalk along Gaines Street?

[fol. 62] Q. On Gaines or Gadsden?

A. I mean on Gadsden Street?

Q. Either one?

A. There were some persons standing out on the sidewalk or on the grass by the sidewalk. I couldn't tell just where they were standing. This is elevated from where I was standing but there were persons standing out there, a few.

Q. Did you order them to disperse?

A. I ordered the entire,— I spoke to this group that was on the jail property and these people, I wasn't speaking to them. They were not on the jail property but they did leave when they heard what I said, with the exception of the three people that I said were adult females and I later found out they were there for business. In fact, they were waiting there and they dispersed when I dispatched an officer to find out if they were part of this group. I don't think they realized what was going on.

Q. You did not make any arrest of any person on the sidewalk?

A. I did not.

Q. You're quite certain that all the persons were arrested were on the jail grounds?

[fol. 63] A. Definitely because prior to arresting them, after I had told them they were placed under arrest, the officers that were there were sent from the sides in front of the jail to encompass the entire group. That would be the officers that were standing along this area here. Then when the arrest was made, they come around this area here and only those within that circle was taken.

Q. The others were allowed to stay?

A. They left but none of this group left or could leave after I placed them under arrest and no one else joined them.

Q. Now, I believe that your testimony was that you had conversation with Alton and Blue.

A. That is correct.

Q. And they were sitting on the ground?

A. Along with others.

Q. And you leaned down like this to talk to them and you talked to them in regular conversational tone?

A. Normal tone of voice, yes.

Q. So that the people on the outskirts of this group couldn't hear what you said?

A. Could not have but those within, oh, four or five or six,— Now they were all sitting there like this. There were [fol. 64] a number of them definitely could have heard it but I don't know who they were.

Q. So you're not disputing the proposition that a number of them could have heard it?

A. Oh, no. Oh, no, absolutely not.

Q. You want to be fair about this.

A. That's right.

Q. And I think you said you said to Alton and Blue, "I'll give you ten minutes to leave".

A. Yes. I told them that after I asked them to talk with this group and tell them what law they were in violation of and ask them to ask the group to disperse and then I told them I would give them ten minutes to discuss it, talk it over and talk to this group.

Q. And then you said Alton and Blue did not discuss it.

A. They talked amongst themselves there a little bit. I had stepped back. They talked amongst themselves just a little bit. I did not hear what they said.

Q. All right. When you told them, "I'm going to give you ten minutes to leave", you said that at the same time and in the same manner that you told them to please discuss it?

A. That is correct.

Q. So that some of the people heard you say, "I'll give [fol. 65] you ten minutes to leave"?

A. Anyone that heard that would have heard the entire conversation.

Q. And anyone who didn't hear the entire conversation wouldn't have heard that?

A. That's correct.

Q. Then I believe you said you waited ten minutes—

A. Eight to ten minutes.

Q. And then you announced to the entire group, I think this is what you said as I made notes on it, "I announced to the entire group loudly and clearly that they ought to disperse". Is that correct?

A. That they were trespassing and if they did not disperse, that they were in violation of trespass and refusing to obey a lawful order.

Q. And you also told them at that time that any resistance to arrest would constitute an additional charge against them?

A. Those so resisting.

Q. You told them all of that at the same time?

A. I did.

Q. You said that in a loud clear voice?

A. I did.

Q. Now, in fairness, was it your opinion that everybody [fol. 66] on the jail grounds heard that command?

A. I said it very clearly and loudly. I am positive they heard it.

Q. I would not dispute your statement on it because I don't know. Then I believe you said you waited one minute or two minutes before you announced, "Everybody here is under arrest".

A. It was just a minute or two or three. In other words, as I stated before,—

Q. Well, now, Sheriff, I don't mean to interrupt but you didn't say a minute or two or three when you were testifying on direct. Now, do you plan to change your testimony? Was it a minute or two or more?

A. Well, it was a minute or two or three if that's the way it goes but I then stepped back at the time I told the group there, those that were standing up, most of them sat down and I realized that there was not going to be any intention of them moving. Then I had the officers get

around behind them and then placed them under arrest; then it only took just a minute or two for the officers to leave their position and close around them.

Q. So then it's your testimony that it was, at the most, four minutes between the time of your general announce-[fol. 67] ment and the time of the surrounding of these people and their arrest?

A. Approximately that, yes. I wasn't watching my watch to the extent of that when they were placed under arrest. They were placed under arrest as a group. That don't mean that in four minutes they were all in the jail. It don't mean—

Q. No, but you and I know that being under arrest means you're under arrest subject to being jailed. Right? When an officer says you're under arrest, that's it.

A. That is correct.

Q. Being jailed is just a necessary step but expected.

A. Well, I just didn't want any confusion as far as the jury is concerned.

Q. I am very much in accord with that proclamation. Now, we all agree that so far as the bunch of these people were concerned, your order to disperse was followed by arrest within four minutes. Now, some of them may have heard your first order about ten minutes. Right? So will you admit that some of them didn't hear it and as for those who didn't hear it, those on the outskirts of this crowd or back a few rows, you only gave them a minute or two. Isn't that right?

A. I didn't give them very long. As I say, when I made [fol. 68] this announcement and they started sitting down, I realized what their answer was.

Q. But only some of them sat down.

A. Majority of them, I said. You'll find that in the record.

Q. Now, do you know whether any of these people sat down or stood up?

A. That, I could not say; I could not.

Q. Do you know whether these people were in the front or the back?

A. I couldn't say that.

Q. Sheriff, you have been a peace officer for ten years?

A. Twenty-three years.

Q. Well, I'm sorry. I apologize. That's a very commendable record but you testified you were sheriff ten years. That's what I—

A. That's correct.

[fol. 69] Re-direct examination.

By Mr. Strickland:

Q. You were asked the question on cross examination if, —I forget whether it was a question or the answer that included the statement that there were people in the Leon County Jail at that time under contempt of court. Now, the duties that you had performed, that is, the action you had taken up to that time in connection with those people, [fol. 70] was that or was it not under an order of the Circuit Court?

Mr. Simon: To which I respectfully object on the ground that that is not anything that was brought out on cross examination.

The Court: Objection overruled.

A. I had a number of people in jail. Some of them were results of this Circuit Court action. Some of them that were arrested under this Circuit Court action wasn't even in the jail. They were at the county road camp or out at the fairgrounds. I don't know whether they were in jail or not.

By Mr. Strickland:

Q. Let me finish my question now. Defense counsel mentioned a certain demonstration, I think. Now, the prisoners that you had in the Leon County Jail at that time concerning that demonstration, those are the only prisoners I'm

asking you about. State whether or not you had custody of those prisoners under a Circuit Court order.

A. I did but I don't think they were in the jail. Now, they were in custody but I don't think they were in the Leon County Jail when this group come down. I think they had been moved to other quarters and were not even in the county jail. The only prisoners that were in the county jail [fol. 71] were prisoners that were in there for crimes.

Q. Now, whether they were in the jail building, itself, or in the county fairgrounds building, did you have custody of those people just because you decided to do it or did you have custody of them under a Circuit Court order?

A. Under a Circuit Court order.

[fol. 72] JACK DAWKINS was called as witness in behalf of the State and after being duly sworn was examined and testified as follows:

Direct examination.

By Mr. Strickland:

Q. State your name.

A. Jack Dawkins.

Q. Your occupation?

A. Deputy Sheriff, Leon County, Florida.

Q. How long have you been a deputy sheriff?

A. Since January 6, 1953.

Q. How long had you been a law enforcement officer prior to that time?

A. I was with the Tallahassee Police Department for approximately two years.

[fol. 73] Q. Does that make about eleven or so years of continuous law enforcement experience?

A. A little more than that, yes, sir.

Q. Were you a deputy Sheriff of Leon County on September 16, 1963?

A. I was, yes, sir.

Q. And early on the morning of that date did you have occasion to go to the Leon County Jail?

A. I did.

Q. Approximately what time, just roughly?

A. Probably between 9:30 and 10:00.

Q. When you arrived at the jail building, what did you see at the front door and on the jail grounds?

A. There was a large group of colored men and women gathered partially under the roof overhang there at the entrance to the jail and there was some officers present there standing between them and the doorway to the jail.

Q. What was this group of people doing?

A. Well, at the time we drove up, they were singing.

Q. Now, start at the time that you arrived and got out of your car and tell what you saw and did and heard.

A. I drove in right behind Sheriff Joyce, parked and got out of my car and walked down to the jail entrance. This [fol. 74] group was gathered out under the edge of the roof overhang there and up onto the bank and stairway leading up into the second level of the parking lot there. I stood around the entrance there for some few minutes and they were talking loud among themselves. Do you want me to say what I recall the discussion seemed to be about, their oral discussion?

Q. By the defendants?

A. Yes.

Q. Yes.

Mr. Simon: Pardon me, sir. If your Honor please, I have no objection if the witness can identify which of the defendants were saying this.

Mr. Strickland: Let me correct that, then, Your Honor, and just say by some members of that group.

Mr. Simon: Well, do I take it that he can't identify the defendants by saying this?

The Court: It will be necessary, for this conversation to be admissible, for you to be able to swear under oath that

it was in the presence of these defendants or certain ones of them.

By Mr. Strickland:

Q. Do you know of your own knowledge that the statements that you were about to testify to were made in the [fol. 75] presence of these defendants?

A. Yes, sir.

Q. What did you hear?

Mr. Simon: Now, I can't accept a conclusion, Your Honor. If I could examine the witness in a preliminary manner to see—

The Court: Before he answers it, you may ask him a question or two.

By Mr. Simon:

Q. Can you tell me, sir, which of the defendants you were standing next to and overheard these conversations?

A. I was standing between the group and the entrance to the jail and the discussion was from this group.

The Court: Was it loud enough that all of them could have heard it?

A. Yes, sir.

By Mr. Simon:

Q. Loud enough that all two hundred of them could have heard it?

A. It was loud enough, I think, for all of them to hear it. They were all in this group together there.

Q. All two hundred people?

A. Two hundred? I don't know that there was two hundred there.

Q. Well, can you show the court and jury which of the [fol. 76] defendants sitting in this courtroom heard this

conversation, if any, under oath? There they are, sir. They're right there.

A. If I may explain how I can identify them?

The Court: Yes, you may explain.

A. When the group was placed under arrest, they were marched into the jail basement. They were then booked, fingerprinted and photographed. I have those photographs and fingerprints available for identification.

Mr. Simon: I submit, Your Honor, that the witness may not be aware of the fact that there are thirty defendants and that there were 107 people arrested according to previous testimony. I submit that any conversation not in the presence of these defendants, as I think Your Honor has already ruled, is not admissible.

The Court: I think I have ruled and I believe the witness understands that the remarks which you are about to testify to, if they were made loud enough, if they were in the presence of all of these defendants, then they may be used for or against all of them. If it was just in the presence of certain ones, you'd have to identify which ones it was.

A. All of these present were in the group that was arrested [fol. 77] and placed in jail there at that time. I can't point each one of them out and call his name.

The Court: Were the remarks, that were made, sufficiently loud that it was in the presence of all of these parties here or just in the presence of certain ones?

A. It was loud enough for me to hear it up around the front door and they were in a group, gathered much closer. They should have been able to hear anything that was said.

By Mr. Strickland:

Q. Now, getting to this point so that it won't be lost, the statements that you were about to testify to were made generally speaking by whom?

A. By the group.

Q. The group which included these defendants?

A. Yes, sir.

Q. Now, what did you hear?

A. They were wanting to go to jail and appeared to be directing their remarks to their leader, group leader, that they had come to the jail the night before, had promised that they could go to jail and they were refused and they had come back this morning, this particular morning, to go to jail and now they was demanding to go to jail. They [fol. 78] wanted to go to jail. And they started toward the entrance to the jail and myself and several officers stepped in, in between and blocked them and at that time one of the ministers, Reverend Evans, came up and talked to the group leaders and asked them to move back.

Mr. Simon: I object, if Your Honor please, on the grounds of hearsay.

The Court: Was his remark made sufficiently loud that the entire group could hear or was he just talking to the group leader?

A. He was talking to the entire group.

The Court: The entire group?

A. Yes, sir.

Mr. Simon: This man isn't present. I can't cross examine what the man said about the situation.

The Court: It wouldn't be hearsay if it was made in the presence of the defendants, though, in my opinion; so I rule it's admissible if it was made in the presence of these defendants.

Mr. Simon: Thank you, Your Honor.

By Mr. Strickland:

Q. Will you identify the person you mentioned again?

A. Reverend Evans.

[fol. 79] Q. Go ahead. What did he say?

A. He asked them to stop. He said, "You can't arrest yourselves. They'll have to arrest you". Said, "You all stay where you are and don't try to go in the jail", and they did stop. Then shortly after that the sheriff sent me inside the jail to get the gas gun and stay inside the jail in case they did try to force their way in, they could be stopped.

Q. I believe you said the sheriff sent you inside for that purpose. What did you do inside the jail at that time?

A. I got the gas gun and gas shells and grenades and stayed inside the door there."

Q. Which door was that?

A. That's the door going into the lobby of the jail.

Q. Referring to this sketch on the board, can you identify which door it was that you were standing immediately inside of with the gas gun?

A. Where the "X" is marked is the entrance that goes up into the jail. There's also a stairway goes down to the basement. It was up in the inside of the door that goes into the jail lobby.

Q. In other words, this was the main front door of the county jail?

[fol. 80] A. Yes, sir.

Q. State whether or not there were any vehicles in the entrance driveway of the jail at that time.

A. Any vehicles in the entrance driveway. Can I step up there and point out the parking arrangement?

Q. Yes.

A. The driveway comes in here and goes on through the overhang by the front entrance and out back into this street here. There's angle parking along this area of the overhang. There was cars parked, two or three right along in here, the sheriff's, my own and some other cars back closer to the street. There was a service truck from Eli Witt Tobacco Company parked in here servicing the jail. There

were other cars parked in this lot up here, parked at angles with the drive running through the middle.

Q. You referred to a service truck. Now, would you make a mark on the board to show the position of that service truck?

A. Parked roughly in this manner.

Q. What kind of service truck was this?

A. It was Eli Witt Tobacco Company's panel pick-up and delivery truck. They call on the jail regularly.

Q. Was this truck owned by the Sheriff's office or the [fol. 81] County of Leon?

A. No, sir.

Q. What was the purpose of the truck being there at that time?

A. The driver of the truck was servicing the jail as a customer.

Q. And when you arrived that morning, where was the driver of that truck?

A. When I went into the jail, he was inside the lobby of the jail.

Q. Where was this group of people in relation to the four sides of that truck?

A. Well, they were standing around it leaning on it and some of them were sitting down back of it.

Q. Do you know of your own knowledge whether the driver of that truck finished his duty in the jail and was ready to leave while the group was still outside?

A. Yes, sir, I do.

Q. Did he leave or attempt to leave?

A. He came to the door to leave and then did not leave.

Q. What are the offices that are in the building on the south side of the jail ground there?

A. At that time the Juvenile Court had offices there and I believe the district office of the State Welfare Department [fol. 82] was there.

Q. Do you know whether or not people employed at those offices were there that morning?

A. Yes, sir.

Q. Now, the Juvenile Court offices you're referring to, state whether or not that was a detention cell or a business office.

A. It's a business office.

[fol. 83] Mr. Strickland: Your Honor, the State rests.

Mr. Simon: May we request the jury be excused?

The Court: Let the jury be excused.

(Jury retires)

The Court: The Court will be at ease.

DEFENDANTS' MOTION FOR A DIRECTED VERDICT AND DENIAL THEREOF

Mr. Simon: If it please the Court, at this time the defendants respectfully move for the entry of a directed verdict in favor of the defendants and in support thereof we urge and reiterate each and every of the grounds set forth in the motion to quash except the ones set forth in paragraph 7 thereof which has been withdrawn and for further grounds we wish to suggest to the Court that the State has failed to prove even a prima facie case on a number of particular elements which are indispensable to their proof. The State, first of all, failed to prove that the possession or the title of the lands upon which the trespass is alleged [fol. 84] to have occurred.

(Argument of counsel)

The Court: I'm inclined to think the Supreme Court case to which you refer would have little or no application in this case because I was only in the short time I had there able to read the synopsis of it that was given at the top of it but it indicated to me that this was on a public street and that the charge was disturbing the peace and here we have a charge that it was a trespass charge upon the property of another where disturbing the peace would have no

part in this charge except inasmuch as it might tend to show malicious, mischievous intent. Of course, none of us know what's in the minds of our legislators when they pass these laws but after they passed all these other trespass laws, they came along and said a trespass upon State land is prohibited and any person found guilty of such trespass would be deemed guilty of and punished for a misdemeanor; and if you'll note in that statute, it left out the malicious and mischievous intent. In other words, they made it so strong that if you just trespass upon State property, you don't even have to prove anything except just that they trespassed on it; and so I think that was the purpose in [fol. 85] that statute so far as I could determine because it comes along at the end of the other trespass statutes and apparently 821.18 was a catch-all statute in which every other trespass, it says. Of course, before that they had trespass as accepting timber and picking vegetables and entering fruit trees, box timber and different things and it says all the trespasses would come under 821.18 and then apparently some years later, because 821.18 was passed in 1892; so it was some years later, in 1933, that they came in with this trespass law upon State lands which they didn't even require that a malicious and mischievous intent be shown. I feel that the State has made out a prima facie case and most of the questions that have been raised here are questions of fact for the jury so I'm, therefore, denying the motion. Will you call back the—

Mr. Strickland: If the Court please, before the jury is called back, I'd like to raise another question of law. I'm not aware of whether the Court has made a ruling on the motion to quash.

The Court: I denied the motion to quash at the beginning of the case and also, I believe it was renewed at another point.

[fol. 86] NORMA WALLS was called as a witness and after being duly sworn was examined and testified as follows:

Direct examination.

By Mr. Segor:

Q. Norma, I know this is kind of a unique experience for you so when when I ask you a question and you give me an answer, I want you to give it out in a big, bold voice. I'd like to hear it all the way back here. If I can hear it, then the last gentleman on the end, he can also hear it. That's the important thing. Now, will you tell the Court your full name?

A. Norma Alfreda Walls.

Q. And what's your address?

A. 1540 South Adams Street.

Q. What is your occupation?

A. Student at Florida A. & M. University.

Q. Now, Norma, I'm going to go a bit into your background. Where were you born?

A. I was born in Tallahassee, Florida.

Q. And have you lived here from the moment you were born until the present time?

A. Yes, I have.

Q. Did you attend the public schools of this county?

[fol. 87] A. Yes, I have.

Q. And that includes the grade schools and the high schools?

A. Yes.

Q. And then you now attend Florida A. & M. University in this very city?

A. I do.

Q. What were some of the courses that you studied along the way in grade school, high school and college?

A. Civics and history and I'm taking a government course now.

Q. And during the course of your studies did they acquaint you with the history of the United States and

acquaint you with the Constitution and the Declaration of Independence and the other great documents of our Country?

A. They did.

Q. You studied these while you were in school?

A. Yes.

Q. Now, on the 16th day of September of 1963 were you caused to be arrested in front of the Leon County Jail by the Sheriff of Leon County?

A. I was.

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[fol. 88] Q. Norma, were you aware of the demonstrations that had been going on in this town with regard to the picketing of the theatres?

A. Yes, I was.

Q. And were you aware of the arrest of certain of the students at Florida A. & M. University for those activities?

A. Yes, I was.

Q. Now, on Sunday, which I believe would be September 15, 1963, did certain students, including yourself, gather on the campus or gather somewhere in this city for the purpose of discussing this problem?

A. Yes.

Q. Would you tell us what happened at that gathering?

A. Well, only facts were brought about previous demonstrations and as a result of that I feel like most of us went down because of the things that we learned from the previous demonstrations and brutality that was administered to the girls as a result of them.

Q. Did you go to this gathering voluntarily?

A. Yes, I did.

Q. No one forced you to do it?

A. No, I was my own leader.

Q. It was out of your own conviction that you wanted to go?

A. Yes, and out of the protest of a segregated jail as well as the theatres and other public facilities.

Q. Now, the following day where did the group that eventually ended up at the Leon County Jail first gather?

A. We gathered at A. & M. Campus.

Q. And about how many were present at the time?

A. Approximately 250.

Q. And how did you go from the A. & M. campus down to the Leon County Jail? Before you answer that, tell me, if you know, the approximate distance you think that is.

A. Oh, it's about a mile from the jail to the University.

Q. How did you get there?

A. We walked in a peaceful group.

[fol. 90] Q. You walked. All 250 of you?

Yes.

Q. Did you walk on the sidewalk or in the street?

A. We walked on the sidewalks.

Q. I see. Was there any attempt made to interfere with your walking through the town to the jail?

A. No, there wasn't any interference at that point.

Q. Was there any boisterousness in the crowd?

A. No, it was an orderly group.

Q. Was it relatively quiet, not disturbing people on the way?

A. Yes; it was.

Q. Did you see among the people in that crowd any weapons?

A. No.

Q. There were no bats, no knives, blackjacks or anything of that sort?

A. No, there wasn't.

Q. Of your own personal knowledge do you know whether anybody may have had them hidden on their person?

A. No.

Q. Did you have any?

A. No, I didn't.

Q. Now, about what time did you leave the A. & M. Campus?

A. About 9:00 o'clock; between 9:00 and 9:15.

[fol. 91] Q. And how long did it take you to get from A. & M. to the jail?

A. I'd say approximately between 9:30 and 10:00 o'clock.

Q. 9:30 and 10:00 o'clock roughly. You weren't watching your watch?

A. Yes.

Q. Now, when you got to the jailhouse, where did the demonstrators line up? You can refer to that diagram up there. You don't have to get up. You can just tell us by description. About where did you first line up when you got up there?

A. Well, I think we lined at,— What street is this running—

Q. Gaines.

A. We were at the corner of Gaines and Gadsden and then made a right and went down Gadsden up to the left and then went on the grassy portion of the county jail.

Q. Did you go up a little further than the grass?

A. Yes.

Q. Now, tell us where that grass is.

A. Well, the grassy section is in this area.

Q. I see. Did any of you go up a little further than that, closer to the building?

A. Well, first we traveled the roadway and that's the [fol. 92] driveway and then we all ended up on the grassy section out of the way of the cars because there were cars parked there.

Q. Did an officer come out and request that you step back a little towards Gadsden Avenue?

A. Yes.

Q. And did you do so?

A. We did.

Q. You did so. Was there any protest against doing that?

A. No, there wasn't.

Q. You dropped back peacefully?

A. Yes.

Q. Now, about where on that diagram did you station yourself? Did you stay in one spot or did you move around?

A. Well, I was stationed in the front portion near the rim of the border line, the cement border of the grass.

Q. That would be about where? Show us on the diagram.

A. Well, as I said, this is the driveway and then there's a grassy portion and there's a cement rim around the grassy portion, I think, and I was stationed directly behind that cement block or that line.

Q. Were some of the students that you noticed on the roadway there?

A. No, I didn't notice any students on the roadway. They [fol. 93] were across the street on the sidewalk somewhere in the vicinity but not on the roadway.

Q. Did you notice any vehicles that attempted to go into that roadway that couldn't make it and either turned around or just stopped because they couldn't get in towards the jail?

A. Oh, no, there were none that attempted it and couldn't make it, no.

Q. I see. Did you have any intent to interfere with any vehicles that might go up to the jail?

A. No, that wasn't our purpose there.

Q. Do you know of your own knowledge whether anybody else had an intent to interfere with vehicles loading or unloading or doing other business at the jail?

A. No. We went strictly in protest of segregated facilities and other things.

Q. Now, what was the total time that you stayed in the jailhouse area before the arrest was made, if you recall?

A. Would you repeat that, please?

Q. Yes. From the time you got there, how long was it before the Sheriff finally arrested you?

A. Oh, I'd say about quarter to ten or 10:00 o'clock.

Q. In other words, it was a total of about a half hour or [fol. 94] so that you were there demonstrating before the final arrest was made?

A. Yes, that's correct.

Q. And during that time did you or any of the people that you saw or heard, evince any outward intent to storm the jailhouse?

A. No, we didn't go there with any intent of violating any laws.

Q. What was your intent of going there?

A. Our intent was going there to protest the segregated facilities and the brutality that was administered to the helpless girls and unarmed girls on the demonstration of Saturday. I think that was September 14.

Q. In your own mind did you feel that you had a right to go there and make this protest?

A. I certainly did. In fact, that's exactly why I went.

Q. Did you go there with the intent of damaging the property, the county property?

A. As I said before, I went there with no intent of violating any laws, only in protest.

Q. While you were in the course of the demonstration, did you hear any bad language used by any of the demonstrators?

A. No, there was none.

Q. Nothing that would be off-color?

[fol. 95] A. No such language was used.

Q. Nothing of that sort?

A. No profanity was used.

Q. Are you familiar with the figure of the Sheriff of this county, who he is?

A. Yes, I know Sheriff Joyce.

Q. You would recognize him?

A. Yes, I would.

Q. Did you see him at the demonstration?

A. Yes, he was there.

Q. About how long after the demonstration started at the jailhouse did the Sheriff arrive?

A. Oh, I'd say about 9:30 or something in that vicinity.

Q. 9:30?

A. Approximately 9:30.

Q. And did you see him as soon as he arrived?

A. Yes, we did.

Q. You spotted him?

A. Yes.

Q. And what was the first thing he did?

A. Well, he came out and stood around a while and he instructed his officers and deputies and other people that were around—

Q. Did you hear what they said?

[fol. 96] A. No, I didn't.

Q. You just saw him standing there talking?

A. Yes.

Q. And about how long did he stand there and talk to his deputies and the other officers?

A. Oh, for about a half hour, which would make it about 10:00 o'clock, I think.

Q. I see. And then after he finished instructing or talking or whatever he was doing next to the officers, what did he do after that?

A. He came over and talked to two of the young men who were in front of the line, on the border line along with me.

Q. They were near you?

A. Yes, they were.

Q. They were near you. And after he spoke to them, then what did he do?

A. Well, he stood for a while, about ten minutes, I imagine, and then he repeated to the group loudly and clearly that we should disperse in about five minutes and those remaining on the premises of the county property would all be jailed or arrested.

Q. When he was talking to these two fellows who were fairly close to you, you were stationed right nearby them, [fol. 97] what kind of a voice was he using? Was he using conversational or shouting so that a lot of people would hear?

A. It was a conversational voice because I was nearby and I couldn't hear him.

Q. Oh, you couldn't hear exactly what he said?

A. No. I heard the murmurs but the conversation, I couldn't hear at all.

Q. In other words, the crowd that was nearby, you couldn't hear at all. What did he tell the group when he finally addressed the group?

A. Well, he asked us to disperse within five minutes and if we didn't, we would be arrested.

Q. When he was saying this, where were the Sheriff's deputies and the other police officers?

A. Oh, they were,— Shall I show you by diagram?

Q. Yes.

A. The grass area was located here. Here's a parking lot in front of where the cars pass in front of the jail and the officers were surrounded so they left us in the center.

Q. In other words, you were all surrounded when he first addressed the entire group?

A. No, No, not at first. They were standing apart but as [fol. 98] he said it and after five minutes were up, they just closed in. They were already scattered apart around there.

Q. Did you see, during that five-minute interval, any of the demonstrators leave the area?

A. I saw some move across the street and some move—

Q. Across what Street?

A. Across Gadsden Street. I think there's a Health Department building there and some remained on that sidewalk and some on the other sidewalk.

Q. Which other sidewalk is that?

A. That's the sidewalk that separates Gadsden Street.

Q. I see. Now, some were on the jailhouse side of Gadsden Street and some of them were across the street?

A. Yes, some of them were across the street.

Q. On both sides of Gadsden Street. Were any of those who were on the opposite side, in other words, farthest away from the jailhouse on Gadsden Street, were any of them arrested?

A. I think a few of them were arrested. I'm not certain if it was on the sidewalk near the jail or opposite, on the side where the Unit is, the Health Unit.

Q. Were any of those on the sidewalk on the near side of [fol. 99] Gadsden Street, in other words, back where the jail is, were any of those arrested?

A. I think there were about two or three.

Q. Do you know the names of those?

A. No, I don't know the names but—

Q. You saw them brought into the group?

A. Yes.

Q. Now, did you or any of the people you observed attempt to leave the area that were stopped by the officers after the Sheriff gave his command to disperse?

A. Well, through conversation I know a few that were attempting to leave but—

Mr. Strickland: Object to conversation.

The Court: Objection sustained.

By Mr. Segor:

Q. I just have one or two more questions to ask you. You came to this demonstration in the morning and, of course, it lasted for only a short while, about a half hour before you were arrested. Did you intend to stay on that lawn indefinitely or were you there for the purpose of a demonstration to put your point across and then to leave?

A. Well, I was there for the purpose of a demonstration. However, I would have stayed as long as I felt it necessary [fol. 100] or I could have stayed.

Mr. Segor: No further questions.

Cross examination.

By Mr. Strickland:

Q. Did I understand you to say that there were about 250 in the group that marched down there on Monday the 16th?

A. That's correct, yes, there was.

Q. Were you one of the group that arrived first in front of the front door of the jail at the entrance steps?

A. No. We were on the grassy area.

Q. Did the people who were in the front of the group start to walk up the steps at the Leon County Jail front door?

A. To my knowledge, no.

Q. You don't know one way or the other, do you?

A. Well, I didn't see them.

Q. Did you hear some of the members of this group demanding to be arrested?

A. No. We went down in protest but not to be arrested.

Q. Did you carry a sign with you?

A. No, I didn't.

Q. Did any of them carry a sign that you saw?

A. No.

Q. Did you, yourself, make any statement to the Leon County Jailer who was first there or to any of the officers [fol. 101] who arrived later?

A. No, I didn't.

Q. Did you hear any of the people that were in the group make a statement to any of the officers of the exact purpose of the demonstration?

A. No, I didn't hear them.

Q. Then neither yourself nor anybody that you heard made any protest against the segregated facilities at that time, did you?

A. That was the purpose of our march.

Q. You did not do it, though, did you?

A. Literally, I don't know.

Q. You didn't do it, did you?

A. No, I didn't.

Q. And you didn't hear anybody else do it?

A. No, I didn't hear anybody else do it.

Q. Did you, yourself, make any protest about what you called the brutality administered to the girls the previous Saturday?

A. Yes. That's why I marched down, for that purpose.

Q. I mean a verbal audible protest at the jail?

A. No.

Q. And you didn't hear anybody else do so either, did you?

A. No, I didn't.

[fol. 102] Mr. Strickland: No further questions.

Mr. Segor: No questions.

PATRICIA MAYS was called as a witness in behalf of the defendants and after being duly sworn was examined and testified as follows:

Direct examination.

By Mr. Segor:

Q. Will you state your full name?

A. My name is Patricia Mays.

Q. And what's your address?

A. 211 Wheatley Hall, Florida A. & M. University.

Q. And your occupation, I guess, then, is student?

A. Yes.

Q. Patricia, were you arrested at the Leon County Jail on September 16, 1963?

A. Yes, I was.

Q. And where were you standing at the time of your arrest?

A. I don't know the street name but I was standing by—

Q. Will you show it on the diagram? Now, what is that? Is that grass or sidewalk?

A. This is the sidewalk here. This is grass and this is [fol. 103] a tree and I was standing by the tree.

Mr. Segor: Right there. Okay, Patricia, that's all. Thank you.

Cross examination.

By Mr. Strickland:

Q. Did you hear the Leon County Sheriff make a statement that persons who did not leave would be arrested?

A. Yes, I did.

Q. Did you attempt to leave?

A. No.

Q. Then you stayed until you were arrested. Is that correct?

A. Yes, that's correct.

Q. Wasn't that your purpose in going there?

[fol. 104] A. No, it wasn't at all.

Q. Well, after he made the statement that those persons who stayed would be arrested, wasn't it your purpose at that time to stay so that you would be arrested?

A. No, even if I wanted to leave, I couldn't leave because I was surrounded by officers so I didn't have a choice really.

Q. What attempt did you make to leave?

A. I didn't make any attempt to leave at all.

Q. How far apart were the officers behind you along Gadsden Street?

A. I don't know.

Q. Couldn't you have walked away if you had wanted to?

A. No, I couldn't have.

Q. For what reason?

A. Because the officers was surrounding me and if I would have gone one way, I probably would have been picked up either on,— Said I was resisting arrest so I really didn't have a choice.

Q. How many officers were there surrounding you?

A. I don't know.

Q. How close was the one closest to you?

A. Oh, he was touching my arm.

Q. And how close was the next closest to you?

[fol. 105] A. I don't know.

Q. Which side was he, your left arm or your right arm?

A. It was my left arm.

Q. Couldn't you have walked off to the right if you had wanted to?

A. If I would have walked off, he probably would have gotten me and said I was trying to resist arrest so I didn't really have a choice.

Mr. Strickland: No further questions.

Mr. Segor: No questions, Your Honor.

TOMMIE WRIGHT was called as a witness in behalf of herself and the other defendants and after being duly sworn was examined and testified as follows:

Direct examination.

By Mr. Segor:

Q. Tommie, will you tell us your name?

A. My name is Tommie Wright.

Q. And what's your address?

A. 219 Crawford Hall, Florida A. & M. University.

Q. And what's your occupation?

A. I'm a student at Florida A & M. University.

[fol. 106] **Q. Tommie, were you arrested on September 16, 1963 somewhere in front of the jailhouse in Leon County?**

A. Yes, I was.

Q. Show us with reference to that diagram just about where you were.

A. I was on the sidewalk just above the embankment.

Q. Just above the embankment?

A. Yes.

Q. Tommie, how close were you to Gadsden Street?

A. I was—

Q. In feet without reference to the diagram, how close in feet? Can you estimate it, give a rough guess?

A. No, I couldn't.

Q. Were you closer to Gadsden Street than Gaines Street?

A. I was probably in the center of both of them; about the same distance from both of them.

Q. Was the parking lot in front of you or in back of you?

A. In back of me.

Q. In back of you.

Mr. Segor: No further questions.

Cross examination.

By Mr. Strickland:

Q. Did you hear the Leon County Sheriff make a statement that persons who did not leave would be arrested?
[fol. 107] A. Yes, I did.

Q. Did you make any effort to leave?

A. I was standing on the sidewalk at the time when he made the statement and as I stood up, an officer caught me by the right arm and told me to go this way which was to jail, when I stood up.

Q. Did you stand up just immediately after the Sheriff made that statement?

A. No, I stood up about a minute after because I was sitting, you know, on the sidewalk and my legs were on the embankment and I brushed my legs off before I got up and I picked my sweater up and stood up on the sidewalk where I had been sitting and he caught me by the arm.

Q. And what did he say to you at that time?

A. He said, "This way", and I know I was headed towards the jail so I went on because he said if I resisted arrest, I would be charged stiffer than just, you know—

Q. At that time when you stood up, were you in the middle of a group of students?

A. No, I was behind the students.

Q. You were behind them?

A. Yes, I was.

Q. Then there was nobody behind you. I mean there was [fol. 108] nobody in the line of students farther back away from the jail than you were. Is that right?

A. There were some across the street and some of them on the sidewalk behind the parking lot.

Q. How long is it that you think you continued to sit there after the Sheriff made that statement before you got up?

A. Oh, about a minute because I brushed my legs off and picked my sweater up off the ground because I was sitting on my sweater.

Q. Well, do I understand, now, that the time that elapsed from the time the Sheriff made that warning until you did stand up was just the time that it took to brush your legs and straighten your skirt?

A. No, I picked my sweater up off the ground and shook it off, too, because on the embankment there's some clay and some scarcity of grass on the embankment so I shook my sweater off and stood up just where I had been standing and he was standing behind me all the time and he caught me by the arm, my right arm, and took me like this and said, "This way". So what could I do but go that way?

Q. Well, now, is it correct that immediately when the Sheriff made that statement that those who did not leave [fol. 109] would be arrested, that you immediately started brushing your legs and picking up your sweater?

A. Yes.

Q. And as soon as you did that, you stood up and an officer grabbed you by the arm?

A. Yes, sir. He was down there all the time right behind me on the sidewalk.

Mr. Strickland: No further questions.

Mr. Segor: No questions, Your Honor.

Mr. Segor: Your Honor, the defense rests.

RENEWAL OF DEFENDANTS' MOTION FOR A DIRECTED VERDICT AND DENIAL THEREOF

Mr. Simon: I would like to renew the motion for a directed verdict at the close of all of the evidence that we made prior on the same grounds without argument at this time so it won't be necessary that the jury be excused.

The Court: That's denied and exception noted.

(At the request of Mr. Simon a 5-minute recess was granted and at the conclusion of the recess the following proceedings were had.)

Mr. Simon: If Your Honor please, I filed in this cause [fol. 110] a motion to quash the information and I stated in ground 7 that there is a segregated courtroom here and I apologized to the court for doing it because I stated that it was in error; and the basis of my apology was information which had been given to me from time to time by the County Attorney of this county and by the various circuit judges of this county. I discounted it as baseless and malicious rumor the fact that on prior occasions when there have been trials in this courtroom and in this courthouse involving race relation situations involving numerous Negro defendants, that the so-called white restrooms of white men and white ladies were locked.

The Court: That was not true this morning. I don't know anything about this afternoon.

Mr. Simon: I discounted it as a baseless rumor and it was not true this morning and, of course, Your Honor knows that the maintenance of such signs is illegal and contrary to the Constitution; that this afternoon and at this very moment those rooms are locked and I regard this as sufficient grounds to demand a mistrial in this cause. I state to your Honor that whichever moron did something as silly as that is affronting this court, is denying justice [fol. 111] to these people and is making a mockery of the law of this State and I respectfully request that Your Honor order, that Your Honor has got the capacity and the ability to run this courtroom and all necessary adjuncts to it; I respectfully submit that Your Honor require that these rooms be opened and that they be permitted to be used by all persons and I move again for a mistrial of this cause until and unless those doors are opened immediately.

The Court: Sheriff, do you know anything about the doors being closed out there? This morning I observed everybody using them.

The Sheriff: I do not, sir. I don't know a thing about it but I do know they were not locked this morning.

The Court: Because I'm not custodian of the building but neither white nor colored could enter them if they were locked.

Mr. Simon: Well, it's perfectly apparent, Your Honor, why this was done because these young men and women were using the so-called white restrooms this morning either out of protest or out of need because there are just too many people to use the restrooms that were available for "colored". Now, I respectfully submit, Your Honor, that this must be an affront to you personally as it is to me [fol. 112] and as it is to every intelligent-thinking person. It's one thing to sit in a trial in a courtroom and expect justice and I think we can get justice in this courtroom but when some underling takes upon himself the task of deciding that he is going to be the arbiter of what is right and what is wrong by locking rooms, I think that this court should take it upon itself to show that the Court, in fact, doesn't stand for that type of silly nonsense. I'm sorry if I sound upset but I am that. I can conduct a trial but I cannot stand still in front of an insult such as this.

The Court: I don't think that I have any authority outside of the courtroom in the operation of the building inasmuch as it's under the Clerk of the Circuit Court. However, if the Sheriff will do so, will you order them to open up all the restrooms around here so they can go to the bathroom?

The Sheriff: I'll so instruct the custodian but I don't have a key to any of those.

The Court: The Court doesn't have one and this morning I observed everybody using them, everybody using the same bathroom.

Mr. Simon: As an officer of this Court I will tell you that I have personally checked both rooms outside of this [fol. 113] courtroom about ten minutes ago and they were both locked and I submit to Your Honor that the one person in this building who did that is one over whom Your Honor has complete power in accord with this court.

The Court: That's the Clerk of the Circuit Court, though, that has the power as custodian of the building.

Mr. Simon: Will Your Honor wait until I get out a writ of mandamus?

The Court: No, what I'm going to do is go ahead and let him open up the rooms and continue the recess where everybody can enjoy themselves.

(Upon conclusion of the recess the following proceedings were had.)

Mr. Simon: The defendants appreciate Your Honor's indulgence as to matters just referred to and because of the success of our efforts, our motion for a mistrial is withdrawn.

The Court: Thank you, Mr. Simon.

TRIAL COURT'S RULINGS AT CHARGE CONFERENCE

(Requested charges are considered by the Court.)

The Court: The Court will give defendants' requested charges Nos. 1 and 3 and refuse to give No. 2 which is as follows: "You are instructed that if you find that the defendants went upon the State's property in good faith, in [fol. 114] the honest and sincere belief that they might do so or that their going upon the State's property was not marked by any spirit of wantonness or willfulness, or evil design, then you must find that the defendants' acts were not malicious and mischievous. In other words, before you can determine that the defendants' actions were malicious and mischievous, the testimony must satisfy you beyond a reasonable doubt that the trespass was not only against the consent of the State, but that it was attended by circumstances of bad faith, intentional wrong, evil intent and without color or right of law on the part of the defendants." And the Court refuses to give requested Charge No. 4 which is as follows: "A trespasser is someone who comes over or upon the property possessed of another without any permission, express or implied, without invitation or permission, or without lawful authority or without color of lawful authority. Therefore, if you find that the defendants were upon public rather than privately owned lands, you must find them not guilty."

"Further, should you find that the defendants had expressed or implied permission to be on the land of another, then you shall find them not guilty."

[fol. 115] "So, also, if you find that the defendants were upon the property lawfully or under color of law, then you shall find them not guilty. The defendants would have been acting under color of law if they believed that they were acting pursuant to a right which is protected by the Constitution of the United States or the Constitution of Florida, or the laws and statutes of the United States or the State of Florida. Such belief need not have been the belief of a prudent man." I am refusing in their presence today defendants' requested Charge No. 5 which is as follows: "You are instructed that in order to find the defendants guilty, you must find that they acted with both a malicious and mischievous intent. By malicious, it is meant that the acts must have been done with evil intent or design and without justifiable excuse. That is, the act was done from innate and/or sheer meanness, and that the act must denote a depraved and wicked spirit. The word mischievous is synonymous with injury and means damage, harm, hurt, or injury. Thus, you must find that the defendants are innocent, unless you find that their acts were done with an evil intent or design, without justifiable excuse and from meanness or wickedness for the purpose of doing damage, [fol. 116] harm, hurt or injury". I am also refusing to give defendants' requested Charge No. 6 which is as follows: "You are further instructed that the State may not lawfully prevent persons from peacefully protesting the denial of constitutional liberties under the guise of enforcing a trespass statute. This is true even though the alleged trespass occurs on State owned property. Thus, if you find that the defendants were peacefully protesting the denial of their constitutional rights or those of their fellows, then you must find them not guilty."

Mr. Strickland: Your Honor, this is the amendment to defendants' requested Charge No. 3 which was to be added

immediately following their No. 3 as worded without objection by the defendants.

(Presented to the Court.)

The Court: You can call the jury in.

(Jury returns.)

[fol. 117]

CHARGE OF THE COURT

Gentlemen of the Jury, these are 32 cases being tried at one time and I might say that this is the first time that I have had the privilege of trying that many cases or the vexation of trying that many cases at one time before a jury and I know it has been a strain on the prosecuting attorney and on the defense attorney in this case and it certainly has been a strain on the Court and probably on you but I might say before beginning my charge here that I appreciate the cooperation of the defense counsel trying these cases all at one time because otherwise he could have required a severance and tried each case individually and I think we would have all been here until next December and we appreciate that we can try them all at one time because the evidence would have been the same in each case, I suppose; but each of these cases, I'll read you the first one. Harriett Louise Adderley, an affidavit filed against her charges that on the 16th of September 1963 in Leon County, that one Harriett Louise Adderley did trespass, with a malicious and mischievous intent, upon certain property owned by Leon County, a political subdivision of the State of Florida, said property being located at the Leon County Jail [fol. 118] and contrary to Section 821.18 of the Florida Statutes. The same charge and on the same date is brought against Timothy Benjamin. Another affidavit, with the same charge and the same date, the 16th day of September 1963, was brought against Jesse Evans Blue. Same charge and same date, 16th day of September 1963, charge against Elijah Bradshaw. Another against Mary Dell Bradley; another against Juanita Anne Carruthers; another against

Gail Sylvia Christopher; another one against Geraldine Fields; another one against Conseivillaie Goodson; another affidavit filed, same charge, same date, Ruben Eugene Howard; another affidavit, same charge, same date, against Jerolin Hicks; another affidavit filed against Raymond W. James on the 16th day of September which charges him also on the same charge of trespass; Corrine Johnson also charged the same way on the 16th of September, same charge; another affidavit filed against Nellie Mae Johnson on the 16th of September 1963, the date of the charge, and it's stated the offense that is supposed to have happened and the same charge; Carolyn Yvonne Johnson, same charge, same date; Richard Simpson Jones, III, same charge, same date; Mable Elizabeth Lenon, same charge, same date; Samuel Otis Mackey, same charge, same date; Council [fol. 119] Miller, Jr., same charge, same date; Patricia A. Mays, same charge, same date; Jacquelyn Grace Miller, same charge and same date; Robert Thomas Moses, same charge, same date; Helen Maddox McGhee, same charge, same date; Harris Edward John Perry, same charge, same date; Charles Kenneth Rogers, same charge, also on the 16th day of September, same date; June Delores Rainey, same charge on the same date, 16th of September 1963; James Lawrence Sheppard, same charge, same date; Viviloria Jean Thompson, same charge, same date, 16th of September 1963; Tommie Jean Wright, same charge, same date; William B. Wilcox, same charge, same date and in case you have forgotten the charge in the affidavit, I'll read this one again. "State of Florida versus Norma Alfreda Walls". The affidavit was filed by W. P. Joyce, Sheriff, charges that on the 16th of September 1963 in Leon County one Norma Adfreda Walls did trespass with malicious and mischievous intent upon certain property owned by Leon County, a political subdivision of the State of Florida, said property being located at the Leon County Jail and contrary to Section 821.18 of the Florida Statutes. [fol. 120] Gentlemen, in this case it will be necessary for

you to render 32 separate and distinct verdicts, one on each case as if they were being tried separately. Now, to each of these affidavits the defendant in each case interposed a plea of not guilty. Therefore, in each case this imposes upon the State the burden to prove every material allegation alleged against the defendant to your satisfaction and beyond a reasonable doubt. Each of these defendants goes on trial with a presumption of innocence and that presumption accompanies him or her throughout every stage of the trial unless and until overcome by competent evidence sufficient to convince you of the guilt of the particular defendant beyond a reasonable doubt.

Now, a reasonable doubt is one conformable to reason, one which a reasonable man would entertain. The Court instructs you that by a reasonable doubt is meant that state of mind of a juror where, after having carefully considered all of the evidence, he cannot say that he has an abiding conviction to a moral certainty of the guilt of the accused. Now, in each case you are the sole judges of the weight of the evidence and the credibility of the witnesses. You are likewise the sole judges to determine if and when the pre-[fol. 121] sumption of innocence in favor of the accused has been overcome by the evidence. Among other ways of determining whether or not a witness speaks the truth, you may consider his or her demeanor on the witness stand, his or her means and ability to see, know and comprehend the facts to which he or she testifies and also the reasonableness or the unreasonableness of the testimony of the witness. In three of these cases the defendants took the stand and when the defendant takes the stand, you may consider his or her testimony and it should be considered by you in the same light and under the same rules of law as the testimony of the State's witnesses are considered.

If you remember, in the affidavit it charges that the violation is contrary to Section 821.18 of the Florida Statutes. That statute provides that every trespass upon the property of another, committed with a malicious and mischievous intent, shall be punishable as provided for in the statute.

But in order to convict any one of these defendants, you must believe that that defendant is guilty beyond a reasonable doubt of the charges. There are several very important parts of the charges. In the first place, you must believe [fol. 122] that there was a trespass. I will give you in a minute a more particular definition of a trespass. Then you must believe that it was upon the property of another beyond a reasonable doubt, and beyond a reasonable doubt you must believe that it was committed with a malicious and, not "or", and mischievous intent. "Intent" is an important word there and so is "malicious" and so is "mischievous". It has to be committed with a malicious and mischievous intent. On criminal intent in general, I have a remark or two I would like to make on that. It says the intent with which an act is done is a necessary element of the crime charged against the defendant. "Intent" is a mental process and as such generally remains hidden within the mind where it is conceived. It is rarely, if ever, susceptible of proof by direct evidence but may be inferred from outward manifestations, by words and acts of a person and all the facts and circumstances and so it is for you to determine all the facts and circumstances in evidence whether or not the defendant committed the acts complained of and whether at such time he had such intent beyond and exclusive of every reasonable doubt.

[fol. 123] The State must prove beyond a reasonable doubt that each of the defendants was present at the time and place alleged in the affidavit. If the State fails to prove these elements beyond a reasonable doubt as to any or all of the defendants, then you must find not guilty those persons who the State fails to prove beyond a reasonable doubt were present at the time and place alleged.

You are instructed that the State must prove beyond a reasonable doubt that the trespass complained of by the State must be upon the property of another. If the State has not proven beyond a reasonable doubt the person or persons who possessed said property, then you must find

the defendants not guilty. If the State has proved to you beyond a reasonable doubt that the property involved was in possession of the Sheriff of Leon County acting in his capacity as such on behalf of Leon County, then the State has fulfilled the requirement that it prove that the alleged trespass was upon the property of another.

A trespass is the use of land or real property not belonging to the defendant and without any authority or right to do so.

[fol. 124] "Malicious" means wrongful, you remember back in the original charge, the State has to prove beyond a reasonable doubt there was a malicious and mischievous intent. The word "malicious" means that the wrongful act shall be done voluntarily, unlawfully and without excuse or justification. The word "malicious" that is used in these affidavits does not necessarily allege nor require the State to prove that the defendant had actual malice in his mind at the time of the alleged trespass. Another way of stating the definition of "malicious" is by "malicious" is meant the act was done knowingly and willfully and without any legal justification.

"Mischievous", which is also required, means that the alleged trespass shall be inclined to cause petty and trivial trouble, annoyance and vexation to others in order for you to find that the alleged trespass was committed with mischievous intent.

It is not necessary for the State to prove the defendant intended to do physical damage to a person or to property.

Gentlemen of the Jury, after considering all of the evidence [fol. 125], the argument of counsel and the charges of the Court, if you believe from the evidence that a particular defendant is guilty beyond every reasonable doubt, the form of your verdict in that case should be, "We, the Jury, find the defendant guilty as charged. So say we all", and let one of your number sign as foreman. On the other hand, in any one of these cases should you entertain a reasonable doubt as to the guilt of the defendant and

should you acquit the defendant, the form of your verdict should be, "We the Jury find the defendant not guilty. So say we all", and let one of your number sign as foreman.

In any event it is necessary that all of you agree on each case whether your verdict be for a conviction or for an acquittal.

When you have reached verdicts in each case, you will endorse the same upon the back of that particular affidavit and you may retire, gentlemen, and consider your verdicts.

[fol. 126] Reporter's Certificate (omitted in printing).

[fol. 127]

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT

IN AND FOR LEON COUNTY, FLORIDA

AT LAW

No. 10816

Appeal From County Judge's Court

HARRIETT LOUISE ADDERLEY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX MCGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS, Appellants,

VS.

STATE OF FLORIDA, Appellee.

JUDGMENT OF AFFIRMANCE—November 13, 1964

This cause came on for consideration of the appeal of the appellants from the sentences and judgments of the County Judge's Court of Leon County entered against each pursuant to jury verdicts of conviction; and the pleadings, transcript of trial proceedings, briefs and argument of counsel having been considered, and the Court being advised of its opinion in the premises, it is thereupon

Ordered and Adjudged that the judgments and sentences appealed be and the same are hereby affirmed, and in due course the mandate of this Court shall issue to the trial court.

The appellants were each charged with and adjudged guilty, after jury verdicts of conviction, of having committed a "trespass with malicious and mischievous intent upon—property owned by Leon County, a political subdivision of the State of Florida—being located at the Leon County jail; contrary to Section 821.18, Florida Statutes." The statute referred to denounces and provides [fol. 128] a misdemeanor penalty for "trespass upon the property of another, committed with a malicious and mischievous intent."

The appellants were part of a group of some 250 persons who marched to the premises of the Leon County jail during the mid-morning of October 24, 1963. They were singing, dancing, clapping their hands, but exhibited no violence or threats of violence in the sense of displaying weapons, brandishing clubs, or other menacing gestures. Though they carried no signs and did not seek to address any group, except by singing, the events which had transpired in the community in the immediate past and the manner of approach of the group made it clear that they were engaged in a protest demonstration against certain policies of public officials and recent actions which had taken place or which they thought had occurred.

Upon arrival at the jail a deputy sheriff in charge there requested them to move back from near the entrance to

the jail, which they did. Later the sheriff of Leon County, who is the custodian of the jail and responsible for its operation and maintenance, arrived and took charge. He had previously called for a number of law enforcement officers to proceed to the jail and they arrived soon afterwards. After watching the demonstration for five or ten minutes during which those outside the jail, and some of the jail inmates also, continued to sing, dance and clap their hands, the sheriff spotted two persons, one of which was the defendant Blue, whom he recognized as leaders in the demonstration. He sought to persuade them to advise the group to disperse and leave the jail premises and warned that if the group did not leave those who remained would be arrested for trespass. The apparent leaders made no effort to comply with the request. The sheriff told them he would wait ten minutes to give them the opportunity to discuss the matter among themselves and then would [fol. 129] have to take action if they had not left. The group did not disperse.

After approximately ten minutes the sheriff announced in loud and clear voice so that all in the group could distinctly hear that they were in violation of the law and if they did not disperse and leave the jail premises it would be necessary to place them under arrest. Upon hearing this statement some of the group left the premises, but others, including the appellants, remained. After a minute or two the sheriff directed his deputies and other peace officers, who had been previously stationed, to arrest those who remained. Arrests were then made of 107 persons, including the thirty-two appellants, who were directed into the jail where they were processed by the normal routine of obtaining information for the jail card, photographing and fingerprinting.

The appellants contend, in substance, that the convictions are illegal, for:

- (1) There was no adequate identification of the defendants at the trial as having been among the group which remained on the jail premises at the time of the arrests;

(2) There was no proof of a "trespass", nor, that if there were, such was with malicious and mischievous intent;

(3) That, even if the foregoing grounds are untenable, the statute, Section 821.18, Florida Statutes, as applied to the appellants in this case, is invalid as violative of the constitutionally protected rights of free speech, free assembly and freedom to petition for redress of grievances of appellants.

[fol. 130]

(1)

The identification of appellants as being among those remaining on the jail premises after the sheriff's command to depart and warning of arrest for failure to do so was accomplished primarily by circumstantial evidence. A reading of the entire transcript discloses adequate, substantial, competent evidence from which the jury may have properly found that from circumstances shown there was a clear inference of identity of each of the appellants as among the guilty trespassers, and that no reasonable hypothesis of innocence could be drawn from such circumstances.

(2)

The "trespass" in this case consisted of remaining on the premises of the jail after a clear and distinct demand of the custodian of the property to depart. The fact that the property involved is owned by a governmental entity and is in a sense public property does not exclude it from being the subject of trespass when it is used for an improper purpose or when the custodian, exercising a reasonable discretion to maintain the property for its intended use or to prevent abuses of its use, demands that it be vacated. All public property is not available as a site for exercising free speech, free assembly, and demonstrative appeals for redress of grievances. Certain property is acquired and maintained for purposes in which such use

would be most inappropriate. The living quarters provided a chief executive or other officer would certainly be privileged from such use except with the consent of such officer. The same would be true of areas where for security reasons necessary to the public interest the public entry may be restricted or completely excluded. To be sure, a large latitude may be demanded by a citizen of opportunity [fol. 131] ties to give expression to freedom to protest, but this does not mean that every publicly owned place is impliedly available as a site for exercising these rights.

It is the view of this Court that the premises of a jail or prison or other custodial institution are not, as of right, available for massive demonstrations, particularly if they involve emotional attributes, however praiseworthy the motives or objectives may be. A custodial institution is a very delicate, sensitive and potentially tumultuous place. The custodian and responsible head of such an institution has great responsibilities to the public, to the employees, and to the inmates and he must be vested with a rather broad discretion to control activities not only within the buildings but on the premises near the buildings from which operations within may be affected. It is not necessary that there be sticks, stones, weapons or abusive language to render a group assembly completely out-of-place when congregated on jail premises. The fact that it expresses or arouses deep emotions, or may reasonably be expected to have that effect, may well produce in the mind of a prudent custodian an apprehension that the welfare of the inmates, employees and the public is in jeopardy. Under such circumstances it is not unreasonable for him to demand that the demonstrators quit the premises. If they refuse to do so, those so refusing become trespassers. The definition of trespass which the trial judge gave in his instructions to the jury is "the use of land or real property not belonging to the defendant and without any authority or right to do so". This seems fully in accord with the meaning of that term which the legislators intended in the enactment of the statute.

[fol. 132] The trial judge defined "malicious" to mean "a wrongful act—done voluntarily, unlawfully and without excuse or justification". With regard to the term "mischievous" he said that it means "that the alleged trespass shall be inclined to cause petty and trivial trouble, annoyance and vexation to others". These definitions also appear appropriate and fully expressive of the legislative intent in the use of these terms in F. S. 821.18.

The evidence sustains a finding of violations of the statute.

(3)

Passing to the constitutional question raised, the Court feels that it must, on its own motion, consider its jurisdiction to review same. Art. V, Sec. 4, Fla. Const., vests in the Supreme Court the appellate review of final judgments of trial courts "directly passing upon the validity of a state statute". The circuit court does not have appellate jurisdiction in misdemeanor cases where the trial court directly passes upon the validity of a state statute. *Robinson et al. v. State, Fla.*, 132 So. 2d 3, and cases cited therein.

This jurisdictional question was not raised by any of the parties in their briefs or oral argument, and both sides apparently proceeded on the concept that no direct attack was made on the validity of the statute per se, but that the challenge made is that the statute was improperly construed and as so construed offended constitutional restraints. This Court is of the view that a contention of that nature does not seek or require trial court action of "directly" passing on the validity of the statute, but rather constitutes another attack to undertake to demonstrate that the construction placed on the statute is erroneous. With this interpretation of the trial court's disposition of the issue it is proper to regard that there is no impediment for this Court to proceed to adjudicate the merits of the contentions made on this appeal.

[fol. 133] Appellants rely largely on *Edwards v. South Carolina*, 372 U. S. 229, 9 L. Ed. 697, 83 S. Ct. 680 to sustain

their contentions on the constitutional point. This case has been studied carefully. There are two important differences in that case and the one now under review. In Edwards, the demonstration was on the grounds of the state house at the state capitol, which is an appropriate and more or less traditional area to stage demonstrations to urge political or social action deemed desirable. Furthermore, such an area does not have the sensitive and specialized problems associated with a custodial institution. Also, in Edwards the charge against the appellants was of the common law breach of peace and not trespass. The two offenses may have some attributes in common, but are essentially distinct with different elements and objectives.

This Court deems that Edwards is not controlling or persuasive and concludes that no constitutional rights have been offended by the procedures which were followed up to and including the conviction and sentencing of the appellants.

Finding no reversible error and concluding that the trial court acted properly in the several rulings challenged on appeal, the judgments are severally

Affirmed.

Done, Ordered and Adjudged this 13th day of November, 1964.

Ben C. Willis, Circuit Judge.

[fol. 134]

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

January Term, A.D. 1964

HARRIETT LOUISE ADDERLEY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX MCGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS, Petitioners,

v.

STATE OF FLORIDA, Respondent.

PETITION FOR A COMMON LAW WRIT OF CERTIORARI TO THE
CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

To the District Court of Appeal of Florida, First District:

Petitioners, Harriet Louise Adderley, Timothy Benjamin, Jesse Evans Blue, Elijah Bradshaw, Mary Dell Bradley, Juanita Anne Carruthers, Gale Sylvia Christopher, Geraldine Fields, Conseivillaie Goodson, Rubin Eugene Howard, Gerolin Hicks, Raymond W. James, Corrine Johnson, Nellie Mae Johnson, Carolyn Yvonne Johnson, Richard Simpson Jones, III, Mabel Elizabeth Lenon, Samuel Otis

Mackey, Council Miller, Jr., Patricia A. Mays, Jacquelyn Grace Miller, Robert Thomas Moses, Helen Maddox McGhee, Harris Edward John Perry, Charles Kenneth Rogers, June Delores Rainey, James Lawrence Sheppard, Viviloria Jean Thompson, Tommie Jean Wright, William B. Wilcox, and Norma Alfreda Walls, present this their petition for a common law writ of certiorari and state:

1. Petitioners seek to have reviewed a decision and order of the Circuit Court of the Second Judicial Circuit in and [fol. 135] for Leon County, Florida, dated the 13th day of November, 1964, and filed in the records of said Circuit Court on the 13th day of November, 1964, in Official Record Book 154, page 133.

2. This petition is presented under and pursuant to Article 5, Section 5, of the Florida Constitution, Rule 4.5c of the Florida Appellate Rules, and *Dresner v. City of Tallahassee*, Fla. 1964, 164 So.2d 208, which held that the Florida District Courts of Appeal have jurisdiction to issue a common law writ of certiorari directed to an inferior court to determine from the face of the record whether the lower court has deviated from the essential requirements of law, which writ is appropriate when no other provision for review of the lower court's judgment exists (see also *Robinson v. State*, Fla. 1961, 132 So.2d 3). In the *Dresner* case, *supra*, at p. 211, as in the instant case, "the affirming judgment of the circuit court did not construe but at most applied federal constitutional provisions" so that no direct review of the criminal convictions by the Florida Supreme Court is possible. The Judgment of Affirmance of the court below (Tr. 67) specifically recognized its right to exercise jurisdiction as the trial court did not directly pass on the validity of the statute in question but rather determined it was not improperly construed or applied in the instant case.

3. This petition is accompanied by a certified transcript of the record of the proceedings, including the decision

petitioners seek to have reviewed (which decision is also attached hereto as Exhibit #1), and a supporting brief.

4. The following are the facts of the case:

a) On the morning of September 16, 1963, petitioners walked in a peaceful group of about 250 Florida A & M University students from the campus about one mile to the Leon County Jail, the jailhouse in which petitioners believed [fol. 136] were incarcerated other students who had been arrested the previous night for protesting segregation in certain downtown Tallahassee theatres (Tr.) to peacefully protest segregated facilities at the jail and the arrest of the fellow demonstrators the previous Saturday (Tr. 173, 177, 178; see also 126, 127).

b) The group of unarmed and orderly students, who had walked the Tallahassee streets in a dignified, self-controlled manner and had met with no trouble or difficulty on the way, walked up the driveway of the jail and stood one or two feet from the base of the steps leading into the interior (Tr. 86, 174-176); the demonstrators did not go inside the jailhouse or even on its steps but stood on a portion of the driveway, the adjacent parking lots and certain grassy areas in front of the jail building (Tr. 93, 113).

c) Deputy Sheriff Dekle requested that they step back to about the middle of the driveway; the students immediately complied and did not again move toward the jail (Tr. 86, 87).

d) According to Deputy Sheriff Dekle, there was no violence or threat of violence, the entrance to the jail was not obstructed, no interference with jail business occurred, and petitioners merely "had their own little dance, . . . jumping up and down and singing and clapping their hands" (Tr. 87, 93).

e) Sheriff W. P. Joyce arrived, found everything was all right inside the jail, went outside, watched the demon-

stration for 5 or 10 minutes, spotted 2 student leaders whom he knew (one being petitioner Blue) and told them that if the group did not leave it would be subject to arrest for trespass (Tr. 113, 114, 118).

f) The leaders made no effort to disperse the group. Sheriff Joyce gave the group about 10 minutes to discuss the matter among themselves, in effect repeated his statement, and a minute or 2 later placed the group under arrest (Tr. 118, 119).

[fol. 137] g) There was testimony at trial that some of the arrested persons were standing on the public sidewalk (Tr. 182, 183, 190) and others could not have left if they wanted to on account of police officers' restraint or intimidation (Tr. 188, 189, 191, 192).

h) Sheriff Joyce testified that he had at least 30 or 40 Deputy Sheriffs, City Police Officers and Highway Patrolmen on the scene (Tr. 125).

i) Neither the Sheriff nor any other police officer ever indicated that the property on which the demonstration occurred was closed to the public or in any way restricted (Tr. 76, 170).

j) Sheriff Joyce testified that he believed a group of 107 people were arrested on the morning of September 16, in front of the Leon County Jail (Tr. 120, 121) but he was not able to identify the petitioners individually.

k) Deputy Sheriff Dawkins was not able to identify the petitioners individually either (Tr. 143-163, and particularly 158-160 and 163).

l) Petitioners were convicted upon jury verdicts in the County Judge's Court in and for Leon County, Florida, of violating Fla. Stat. sec. 821.18, which prohibits "trespass upon the property of another, committed with a malicious and mischievous intent, the property in question allegedly being "owned by Leon County, a political subdivision of the State of Florida—being located at the Leon County jail . . ." (Tr. 67).

Petitioners appealed to the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, which affirmed the convictions (Tr. 67 et seq.).

5. On the foregoing facts, the Court was presented with the following 3 points of law:

a) Whether a group of Negroes, peacefully congregating in front of the Leon County jailhouse, for the purpose of protesting the segregated facilities within, as well as the previous arrest of other anti-segregation demonstrators, [fol. 138] are liable to arrest and conviction for violating Fla. Stat. sec. 821.18?

b) Whether a trespass statute such as Fla. Stat. sec. 821.18 can be invoked by the State for the sole purpose of preventing defendants from exercising their constitutionally protected right to protest Florida's announced policy of segregation of the races and the unlawful arrest of other anti-segregation demonstrators?

c) Whether the total failure of the State to present evidence identifying the defendants as the persons alleged to have committed the supposed trespass was grounds for a directed verdict of acquittal?

On these points of law the Circuit Court below entered its Judgment of Affirmance herein sought to be reviewed, a decision and order in effect answering each point of law in the affirmative, contrary to petitioners' legal arguments and position.

6. The same 3 points of law have been answered in the negative, i.e., in conformity with petitioners' contentions, by Florida and/or Federal decisions concerning the Declaration of Human Rights of the Constitution of the State of Florida, Sections 1, 12, 13 and 15 as well as the Fourteenth Amendment to the Constitution of the United States guarantees of free speech and assembly, the right to petition for redress of grievances, due process of law and equal protection of the laws, whereby the decision and order

of the Circuit Court below deviates from essential requirements of the law, as follows (note that the lettering of the subparagraphs hereunder corresponds to the lettering in paragraph 5):

a) It was contrary to essential requirements of the law to affirm the convictions of petitioners for violating Fla. Stat. sec. 821.18 as (1) the record is devoid of evidence that petitioners went upon the property in question *without any legally sufficient right or excuse*, an essential element [fol. 139] of the crime as set forth in *St. Petersburg Coca Cola Bottling Co. v. Cuccinello*, Fla. 1950, 44 So.2d 670, *Boykin v. State*, 1898, 40 Fla. 484, and *Williams v. U.S.A.*, 1951, 341 U.S. 97, 71 S.Ct. 576, 95 L.Ed. 774, and the intent of a reasonable demonstration on public grounds under the prevailing circumstances is a constitutionally protected intent under the Florida and United States free speech guarantees, see e.g. *Edwards v. South Carolina*, 1963, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed. 697, (2) the record is also devoid of evidence of title to the property in question as alleged in the informations, an essential element of the crime according to *Cannon v. State*, 1931, 102 Fla. 928, 136 So. 695, and (3) the record is similarly devoid of evidence of any malicious and mischievous intent on petitioners' part, an essential element of the crime as set forth in the statute itself, since the exercise of constitutionally protected rights to protest segregation in a peaceful manner is neither malicious nor mischievous, leastwise both, see e.g. *Edwards v. South Carolina*, *supra*, all of which constitutes a fatal lack of supporting evidence under *Garner v. Louisiana*, 1961, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed. 207.

b) It was contrary to essential requirements of law to affirm the convictions of petitioners for violating Fla. Stat. sec. 821.18 as said statute is here invoked by the State for the sole purpose of preventing petitioners from exercising their constitutionally protected right under the Florida and Federal Constitutions to protest Florida's announced policy and law of segregation, (see e.g. Fla. Cons't.,

Article XII, Sec. 12; Article XVI, Sec. 24; Fla. Stats. Sections 228.09, 230.23(4)(a), 230.233, 233.43(3), 239.01, 241.39, 741.11-741.20, 798.04-798.05, 350.21, 352.03-352.18, 945.08 (Segregation of prisoners); "Report on Florida", pamphlet by the Florida Advisory Committee to the United States Commission on Civil Rights, and especially pp. 38-39), and petty criminal statutes may not be invoked to [fol. 140] interfere with the constitutional rights of minorities, see e.g. *Edwards v. South Carolina*, *supra*, 1963, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697, *Peterson v. Greenville*, 1963, 373 U.S. 244, 83 S.Ct. 1119, 10 L.Ed.2d 323, *Lombard v. Louisiana*, 1963, 373 U.S. 267, 83 S.Ct. 1122, 10 L.Ed.2d 338, *Shuttlesworth v. Birmingham*, 1963, 373 U.S. 264, 83 S.Ct. 1130, 10 L.Ed.2d 335, *Wright v. Georgia*, 373 U.S. 284, 83 S.Ct. 1240, 10 L.Ed.2d 349, *Thompson v. Louisville*, 1960, 362 U.S. 199. In addition, or in the alternative, (1) Fla. Stat. sec. 821.18 is void for vagueness as construed and applied to permit infringement of freedom of expression, due process of the law and equal protection of the law as guaranteed by the Florida and Federal Constitutional provisions cited in the introductory sections of this paragraph, *Stromberg v. California*, 1931, 283 U.S. 359, 369, 51 S.Ct. 532, 75 L.Ed. 1117, *Edwards v. South Carolina*, *supra*; (2) the general statute involved was used to break up a Negro peaceful protest demonstration whereby "no even-handed application of a closely drawn regulatory statute" appears on the record, as required by *Stromberg v. California*, *supra*, and *Edwards v. South Carolina*, *supra*; and (3) under *Hamm v. City of Rock Hill*, 1964, — U.S. —, 33 L.W. 4079, state trespass convictions for demonstrations at places of public accommodation covered by the Civil Rights Act of 1964 must be vacated (although such demonstrations and convictions took place before passage of the Act, so that by analogy petitioners' peaceful protest of the arrest of fellow demonstrators challenging segregation at Tallahassee movie theatres as well as petitioners' peaceful protest of Florida unconstitutional dis-

criminatory law and policy (including statutory compulsory jail segregation) cannot support the convictions herein.

c) It was contrary to essential requirements of law to affirm the convictions of petitioners for violating Fla. Stat. sec. 821.18 where the record is devoid of evidence [fol. 141] identifying petitioners as the persons alleged to have committed the supposed trespass, an essential element of the crime (see 13 Fla. Jur., *Evidence*, Sec. 438, p. 441, see also *Anderson v. State*, Fla. 1926, 110 So. 250, *Clark v. State*, 1929, 98 Fla. 874, 124 So. 874, *Mathes v. State*, Fla. 1935, 163 So. 479, and *Borrego v. State*, 1952, 62 So.2d 43), a fatal lack of supporting evidence under *Garner v. Louisiana*, 1961, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed.2d 207.

7. The decision and order of the Circuit Court below which petitioners seek to have reviewed deviated from essential requirements of the law. Because of the reasons and authorities set forth in petitioners' brief, it is believed that the decision hereby sought to be reviewed is erroneous and contrary to controlling Constitutional law.

Wherefore, petitioners request this Court to grant a common law writ of certiorari and enter its order quashing the decision and order hereby sought to be reviewed, reversing the convictions of petitioners involved, and granting such other and further relief as shall seem right and proper to this Court.

Respectfully submitted,

Joseph C. Segor, Tobias Simon, Herbert Heiken,
Attorneys for Petitioners, c/o Fla. Civil Liberties
Union, 311 Lincoln Road, Miami Beach, Florida
33139, By Joseph C. Segor.

Irma Robbins Feder, Richard Yale Feder, Of Counsel.

Certificate of Service (omitted in printing).

[fol. 142]

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

January Term, A. D. 1965

Not Final Until Time Expires to File Rehearing Petition
and Disposition Thereof If Filed.

Case No. G-196

HARRIETT LOUISE ADDERLEY, TIMOTHY BENJAMIN, JESSEY
EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY,
JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER,
GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN
EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES,
CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN
YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL
ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL
MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER,
ROBERT THOMAS MOSES, HELEN MADDOX MCGHEE, HARRIS
EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE
DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA
JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B.
WILCOX, NORMA ALFREDA WALLS, Petitioners,

vs.

STATE OF FLORIDA, Respondent.

 OPINION—Filed May 11, 1965

A Petition for Writ of Certiorari from the Circuit Court
for Leon County. Ben C. Willis, Judge.

Joseph C. Segor, Tobias Simon and Herbert Heiken, for
Appellants.

Earl Faircloth, Attorney General; and George B. Geor-
gieff, Assistant Attorney General, for Appellee.

Per Curiam

Certiorari denied.

Carroll, Donald, Acting Chief Judge, Rawls, J., and
Melvin Woodrow M., Associate Judge, Concur.

[fol. 143]

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

January Term, A. D. 1965

Case No. G-196

[Title omitted]

PETITION FOR RE-HEARING

Comes Now the Petitioners in the above entitled cause,
and respectfully petition the Court herein for a re-hearing
and say that the Court overlooked and failed to consider:

1. That there was a total lack of proof in the trial court
below of any of the elements required to be proved under
F. S. § 821.18.

2. That the arrest, trial and conviction of the Petitioners
under F. S. § 821.18 violated their constitutionally pro-
tected rights of due process of law and equal protection
of the laws, as guaranteed by the Fourteenth Amendment
to the Constitution of the United States.

3. That as applied to Petitioners, herein, F. S. § 821.18
is unconstitutional and void for vagueness, in that it failed
to fairly and fully apprise the Petitioners of the conduct
[fol. 144] sought to be proscribed.

4. That the conduct engaged in by Petitioners was con-
stitutionally protected conduct, as is made clear by the
most recent decisions of the United States Supreme Court,
viz: *Cox v. Louisiana*, 85 S.Ct. 453; *Cox v. Louisiana*, 85
S.Ct. 476; and *Edwards v. South Carolina*, 83 S.Ct. 680.

Wherefore, Petitioners respectfully pray that this Court will grant a re-hearing in this cause.

Respectfully submitted,

Joseph C. Segor, Tobias Simon and Herbert Heiken,
Attorneys for Petitioners, c/o Florida Civil
Liberties Union, 311 Lincoln Road, Miami Beach,
Florida 33139, By: Joseph C. Segor.

Certificate of Service (omitted in printing).

[fol. 145]

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
January Term, A. D. 1965

Case No. G-196

[Title omitted]

ORDER DENYING REHEARING—June 7, 1965

Petitioners' Petition for Rehearing in the above styled cause having been considered,

It Is Ordered that the Petition be and the same is hereby denied.

Witness the Honorable Wallace E. Sturgis, Chief Judge,
and Seal of the Court this 7th day of June, A. D. 1965.

Raymond E. Rhodes, Clerk.

A True Copy

Attest:

Raymond E. Rhodes, Clerk First District Court of Appeal, Tallahassee, Florida.

[fol. 146] Clerk's Certificate (omitted in printing).

[fol. 147]

SUPREME COURT OF THE UNITED STATES

No. 506, October Term, 1965

HARRIETT LOUISE ADDERLEY, et al., Petitioners,

v.

FLORIDA.

ORDER ALLOWING CERTIORARI—January 31, 1966

The petition herein for a writ of certiorari to the District Court of Appeal of the State of Florida, First District, is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.